TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 402

THOMAS M. WAMPLER, APPELLANT,

vs.

E. LEE LECOMPTE, STATE GAME WARDEN OF MARYLAND, AND FREDERICK S. BARBER, DISTRICT DEPUTY, ETC.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

FILED AUGUST 28, 1930

(35,324)

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INDEX

	Original	Print
Record from circuit court of Charles County	3	1
Docket entries	3	1
Bill of complaint	4	1
Order to show cause	6	3
Answer	7	4
Exhibit "A"—Blue print	14	8
Opinion, Digges, J.	15	8
Judgment	19	13
Note of appeal	20	14
Clerk's certificate (omitted in printing)	20	
Proceedings in court of appeals of Maryland	21	14
Petition for appeal	21	14
Order allowing appeal	23	15
Assignments of error	24	16
Citation and service (omitted in printing)	25	
Bond on appeal (omitted in printing)	26	
Notice as to appeal	27	17
Docket entries	28	17
Judgment	29	18
Opinion, Pattison, J.	30	18
Clerk's certificate (omitted in printing)	36	
Statement of points to be relied upon and designation of parts of record to be printed	37	24
Designation of additional part of record to be printed	38	25

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1930

[fols. 1-3] **IN CIRCUIT COURT OF CHARLES COUNTY**

No. 1885. Equity

THOMAS M. WAMPLER, Plaintiff,

vs.

E. LEE LE COMPTE and FREDERICK S. BARBER, Defendants

DOCKET ENTRIES

Mem., Bill of Complaint & order to docket & issue fd. Oct. 22*th*, 1929.—Order of Court that Defts. show cause & c fd. October 22*th*, 1929.—1st Subpœna, with copy of Bill of Complaint & order of Court, iss'd to Sh'ff of Balto. City Oct. 22*th*, 1929 for service on E. Le Compte.

1st Subpœna, with Copy of Bill of Complaint & Order of Court, iss'd to Sh'ff Chas. Co. Oct. 22*th*, 1929, for service on Frederick S. Barber.—Return of Sh'ff of Balto City "Sd & copy of Bill & Order of Ct. left Oct. 28th, 1929" fd. Oct. 29th, 1929.—Return of Sh'ff of Chas. Co. 'Sd & copy of Bill & order of Court left Oct. 23, 1929" fd. Oct. 31, 1929.

Ans of Respondents and Exhibit A fd. Nov. 1st, 1929.

Opinion and Order of Court fd. Dec. 13th, 1929. (Prayer for injunction denied & bill dismissed, with costs to the defendants.)

Order to enter Appeal fd. Feb. 11th, 1930.

Thomas M. Wampler and J. Read Bailey, Esq. Attorneys for Plaintiff.

Hon. Thomas H. Robinson, Attorney General, and Robert H. Archer, Esq., Attorneys for Defendants.

[fol. 4] In Circuit Court of Charles County

[Title omitted]

BILL OF COMPLAINT—Filed Oct. 22, 1929

To the Honorable the Judges of said Court:

Your orator, humbly complaining, showeth unto the Court the following facts:

First. That he is a citizen of the United States, and a resident of Charles County, in the State of Maryland.

Second. That on the Third day of June, 1929, there was duly issued to your orator, a license as provided by law to erect, set and maintain a stationary booby, brush or stake blind in the Potomac River for the purpose of hunting water fowl, the said license being Number 2.

Third. That by virtue of said license, on to wit, the 4th day of October, 1929, he erected a blind in accordance with law and not more than 300 yards from the natural shore line of the Potomac River and not in the channel thereof, said blind being erected in the waters of said river as aforesaid and in front of the shore line of the property owned by your orator, near Fenwick, Charles County, State of Maryland.

Fourth. Your orator says that the said defendants, E. Lee Le Compte and Frederick S. Barber unlawfully destroyed the said blind of your orator, on to wit, about the 11th day of October, 1929 and the said defendants have threatened to prevent your orator from again lawfully erecting said blind and have threatened to destroy and to continue to destroy the same when your orator tries to again erect the same, and to prevent the use thereof.

Fifth. Your orator is advised, believes and therefore [fol. 5] alleges that the destruction of his said duck blind and the threatened continued destruction thereof by the defendants and the interference with its lawful use by your orator, and the threatened continued interference with its lawful use by your orator is a violation of his rights under the Constitution and laws of the State of Maryland and is depriving him of his property and lawful rights without any warrant or authority in law, and for which wrongs he has no adequate remedy at law.

To the end therefore:

1st. That the defendants, E. Lee Le Compte and Frederick S. Barber, each of them, their and each of their agents, servants and employees may be enjoined and restrained from molesting and or interfering with the erection, maintainance and lawful use of said ducking blind of your orator, located and to be located as heretofore set forth in this bill, and that your orator may have such other and further relief, both general and special as his case may require.

May it please your Honors to grant unto your orator the writ of subpœna directed to the said E. Lee Le Compte and Frederick S. Barber, adults, and residents of the State of Maryland, commanding them and each of them to be and appear in this Court at some certain day to be named therein, and answer the premises and abide by and perform such decree as may be passed herein; and that this Honorable Court will grant an injunction pendente lite, and upon final hearing permanently, enjoining and restraining the said defendants and each of them, their and each of their agents, servants and employees from molesting and/or interfering with the erection, maintainance and lawful use of the aforesaid ducking blind of your orator.

And as in duty bound he will ever pray and etc.

Thomas M. Wampler, Thomas M. Wampler, in Propria Persona. Thomas M. Wampler, Solicitor for Plaintiff J. Read Bailey.

[fol. 6] *Duly sworn to by Thomas M. Wampler. Jurat omitted in printing.*

Endorsement

Mr. Clerk:

Please docket suit as above, file within Bill and issue as prayed.

J. Read Bailey, Thomas M. Wampler, Solicitors for Plaintiff.

In Circuit Court of Charles County

Order to Show Cause—Filed Oct. 22, 1929

On the aforegoing bill, it is, this 22nd day of October 1929, by the Circuit Court for Charles County and State of Maryland, ordered that the defendants show cause on or before the 2nd day of November 1929, why the prayer of the aforegoing bill should not be granted, provided a copy of this bill and order be served on said defendant or their solicitors on or before the 28th day of October 1929.

W. Mitchell Digges, Chief Judge.

[fol. 7] IN CIRCUIT COURT OF CHARLES COUNTY

ANSWER—Filed November 1, 1929

To the Honorable the Judges of said Court:

The answer of E. Lee Le Compte, State Game Warden, of Maryland, and Frederick S. Barber, District Deputy Game Warden for Charles County, defendants in the above entitled cause, to the bill of complaint of Thomas M. Wampler against them in this Court exhibited, respectfully shows:

These respondents reserving all manner of exceptions to said bill of complaint for its manifold errors, irregularities and improper statements of fact, for answer thereto, or so much thereof as they are advised it is material for them to answer, answering say:

1. That the said bill of complaint and each and every paragraph ther-of are bad in substance and insufficient in law.

2. That the said complainant has not stated in his bill of complaint or in any paragraph thereof, such a case as entitles him to relief in equity.

3. That as to the first and second paragraphs of said bill, your respondents have no knowledge of the matters and facts therein alleges, and neither admit nor deny the same, but demand strict proof thereof.

4. Your respondents deny the allegations contained in the third paragraph of said bill of complaint.

5. Answering the fourth paragraph of said bill your respondents deny that they unlawfully destroyed any duck blinds belonging to the complainant or to any one else in the waters of Charles County, either on the 11th day of October, 1929, or at any other time, and further answering said paragraph deny that they have threatened to prevent the complainant or any one else from lawfully erecting a duck blind in the waters of said county, or that they have threatened to destroy any blind lawfully erected, or to be erected, in the waters of said county or elsewhere, either by the complainant or any one else.

[fol. 8] 6. Your respondents deny the allegations of facts and conclusions of law set forth in the fifth paragraph of said bill.

Further answering said bill of complaint generally, your respondents allege that the respondent, E. Lee Le Compte is the State Game Warden of Maryland, charged with the enforcement of all laws pertaining to game, fish and water fowl within the limits of the State of Maryland, and the respondent, Frederick S. Barber is a District Deputy Game Warden duly and lawfully appointed for the enforcement of all laws pertaining to game, fish and water fowl within the limits of the State of Maryland and particularly within the limits of Charles County, and the waters of the State adjacent thereto.

Further answering said bill your respondents allege that under the provisions of Section 46 of Article 99 of the Code of Public General Laws of Maryland, title "Water Fowl, Fish and Game," subtitle "Water Fowl, Mig-atory Birds," it is provided as follows:

"Whenever an owner of land bordering on any of the waters of this State shall desire to erect a booby, brush or stake blind in front on his property, or other person to whom he shall give permission, shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters * * * unless with the consent of the adjoining land owner."

That under the provisions of Section 40 of said Article, it is provided that owners of riparian rights on the waters of this State shall be first entitled to make a choice of position in front of their property for the purpose of erecting ducking blinds, subject, of course, to the provisions of Section 46 above quoted, and subject also to the provisions of Section 41 of said Article, providing the distance from shore and the distance between blinds; that in order to comply with the provisions of Section 40, it is necessary for such riparian owner to take out a license for such blind on or before October 10th, and to designate the location of

such blind by the erection of a stake on which shall appear the owner's name, together with the number of the lisense issued him by the Clerk of the Circuit Court therefor; that [fol. 9] under the provisions of Section 41 above referred to, such blinds shall not be less than 500 yards apart, and, therefore, any stake that might be erected prior to October 10th to mark the future location of a proposed blind in accordance with the provisions of Section 40 must be 500 yards apart.

That on or about September 5th, the respondent, Frederick S. Barber, discovered in the waters of the Potomac River in front of land alleged to belong to the complainant, two stakes purporting to mark the future location of ducking blinds which stakes were marked Nos. 2 and 3,—No. 2 having attached to it the name of the complainant and No. 3 the name of "Arthur Johnson"; that these stakes were only 90 yards apart, and both of them were less than 250 yards from the dividing line between the property alleged to be owned by the complainant and the adjoining properties on either side thereof; that your said respondent, ascertained that both of said stakes were established without the consent and against the objection of the adjoining land owners bordering on said waters; that the said respondent communicated these facts to the respondent, E. Lee Le Compte, and on the 9th day of October, the said E. Lee Le Compte notified the said Barber to employ the County Surveyor of Charles County, Louis H. Steffens to make a survey of the short line of the Potomac River along the area in question showing the property line of the riparian owners bordering thereon, together with the stakes which had been erected in said waters to mark the location of ducking blinds therein; that the said E. Lee Le Compte further directed the said Barber that if it was discovered that any of these locations were taken in violation of the laws of Maryland that the stakes marking said locations should be removed.

That in pursuance of said instructions from his Superior, respondent Barber had a survey made as above directed, a blue print of said survey being filed herewith as part hereof marked "Respondents' Exhibit A."

That as shown by said Exhibit A, both stakes Nos. 2 and 3 were improperly and illegally erected for the pur-

pose of marking the location of blinds both by reason of being too close together and too close to the dividing line of the adjoining property owners, and for these reasons [fol. 10] the respondent, Barber removed both of said stakes.

That on the southerly side of the land claimed to be owned by the complainant, the land is owned by a certain Grover C. Willett, which property has a frontage on the Potomac River of about 260 feet; that south of and adjoining the Willett property the riparian owner is Daniel Thew Wright, who owns all of the land between that point and Pomenkey Creek, the said Wright also owning by deed of purchase from said Willett, the right to erect, maintain and use duck blinds and other lawful contrivances for the purpose of shooting and taking wild fowl on said waters in front of the said Willett property.

That on the 8th day of June, 1929, the said Wright secured from the Clerk of the Circuit Court for Charles County duck blind license No. 7, for the purpose of erecting a duck blind in front of his said property, and before October 10th, placed a stake with his name and license number thereon in front of his said property and more than 250 yards from the southern boundary of the property alleged to be owned by the complainant, which stake is 255 yards from stake No. 2 above referred to and 345 yards from stake No. 3, above referred to. That the riparian owner on the northerly side of the property alleged to be owned by the complainant is H. F. Olcott, and stakes Nos. 2 and 3 are not only less than 250 yards from his property line but stake No. 3 is actually in front of said Olcott's property.

All of which will more fully appear by reference to Respondents' Exhibit A above referred to.

That as a matter of fact, as shown by said Exhibit A, the property alleged to be owned by the complainant has a water frontage of only 43.7.

7. That your respondents in doing what they have done in reference to the stakes in question in this suit, have only done what the law requires them to do, and if the Court should grant the injunction as prayed by the complainant, it would prevent an officer of the law from performing the duty required of him by his oath of office, and

would enable the complainant to violate the law without fear of prosecution.

[fols. 11–13] Your respondents hereby deny all material facts in said bill of complaint which have not heretofore been either denied or answered.

And, having answered the said bill of complaint your respondents pray to be hence dismissed with their costs.

And as in duty bound, etc.

Thos. H. Robinson, Attorney General. R. H. Archer, Assistant Attorney General.

(Duly sworn to by E. Lee Le Compte. Jurat omitted in printing.

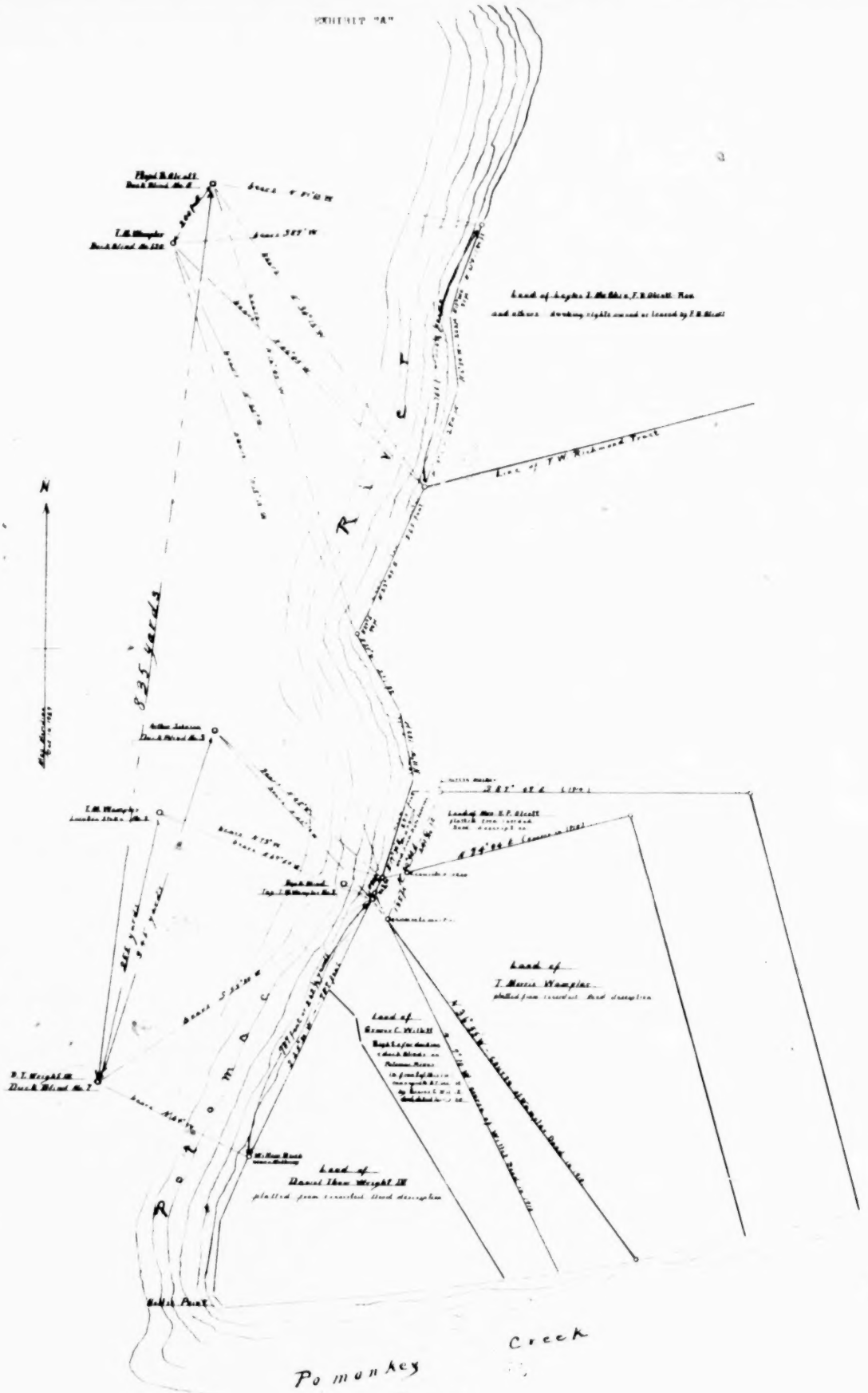
(Here follows Exhibit A, side folio 14)

[fol. 15] In Circuit Court of Charles County

Opinion—Filed Dec. 13, 1929

The bill in this case was filed by the plaintiff, who is a resident of Charles County, Maryland, and alleges that on the third day of June, 1929, there was duly issued to him a license as provided by law to erect, set and maintain a stationary booby, brush or stake blind in the Potomac River for the purpose of hunting water fowl, the said license being numbered 2; that by virtue of said license he did, on the 4th day of October, 1929, erect a blind in accordance with law and not more than 300 yards from natural shore line of the Potomac River, and not in the channel thereof, in front of the shore line of his property, near Fenwick in Charles County; that the defendants the State game warden and the deputy game warden respectively, unlawfully destroyed said blind on or about the 11th day of October, 1929, and have threatened to prevent the plaintiff from again lawfully erecting said blind, and have threatened to destroy and to continue to destroy the same when the plaintiff tries to again erect the same; that the destruction of said duck blind and threatened continued destruc-

EXHIBIT "A"



Po monkey

Plat of

Part of Potomac River Shore

at

McGhiesport 7th Elec. District Charles County, Maryland

showing land holdings on the Potomac River of Duck Blind Applicants and the location of Duck Blinds in the River.

Location of Duck Blinds, as noted, determined by triangulation from points on River Shore, as indicated above.

Surveyed October 10, 1929

Scale 1 inch = 200 feet

tion thereof by the defendants, and the interference with its lawful use by the plaintiff, is a violation of his rights under the Constitution and laws of the State of Maryland and the United States, and is depriving him of his property and lawful rights without any warrant or authority in law, and for which wrongs he has no adequate remedy at law. The prayer of the bill is that the defendants be restrained from molesting or interfering with the erection, maintenance and lawful use of said duck blind located and to be located as set forth in the bill. Upon the allegations of the bill, verified by affidavit, the Court, on the 22nd day of October, 1929, ordered that the defendan-s show cause on or before the 2nd day of November, 1929, why the prayer of the bill should not be granted. In response to the above order the defendants filed an answer in which they alleged that under the provisions of Section 40 of Article 99 of the Code the plaintiff had no authority but on the contrary was prohibited by law from erecting a blind in the position alleged in the bill of complaint, and it became the duty of the defendants to require the removal of said blind, and that upon the plaintiff's refusal to do so, the defend- [fol. 16] ant Barber did destroy the blind in question and ordered the plaintiff not to reconstruct the same. At the hearing on the bill and answer there was no dispute as to the facts, the only question presented being one of law, in which the plaintiff conceded that if the statute under which the defendants acted is constitutional and valid, then the defendants were entitled and it was their duty to remove or require the removal of the blind in controversy; to that the single question presented, and which was argued by counsel for the respective parties, is as to the constitutionality of the legislation which prohibits the erection of a blind out in the waters of the Potomac River bordering on Charles County, by an owner of shore property which contains less than 500 yards of water front. The waters of the Potomac River and the bottoms under the waters, beyond low water mark, on the Maryland side of the river, are the property of the State of Maryland, and therefore the State has the undoubted right to regulate, subject to the laws of the United States in respect to navigation, the erection of any blind thereon or therein, from which ducks and other wild fowl are permitted to be killed. There can be no question that the State has the power, and if through

its legislation is saw fit, could prevent the erection of any and all blinds in or over the waters of the Potomac River within the boundaries of the State. The right to prohibit necessarily includes the right to regulate, the only limitation thereon being that when the State undertakes to regulate, it must not establish classification among its citizens or property owners which would be arbitrary and discriminatory and which classification would not reasonably conserve the object which the legislature had in view. This object in the present case is the conservation of wild fowl and the protection and safety of those permitted to kill same. If the legislation, when construed, does not unreasonably and unjustly discriminate between property owners and does not indicate an arbitrary classification that has no reasonable relation to the object sought, the question is one for the legislature and not for the courts. It is clear that the legislature might provide a classification so unreasonable as to be highly discriminatory and unjust, and in such event the courts would strike down the legislation as being in conflict with the organic laws which provides for the equal protection under the law of [fol. 17] all people. In Jeffry Mfg. Co. vs. Blagg, 235 U. S. 576, the Supreme Court said:

"This Court has many times affirmed the general proposition that it is not the purpose of the 14th Amendment in the equal protection clause to take from the States the right and power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the Court can declare it beyond the legislative authority. * * * That a law may work hardship and inequality is not enough. Many valid laws, from the generality of their application, necessarily do that, and the legislature must be allowed a wide field of choice in determining the subject matter of its laws, what shall come within them, and what shall be excluded."

In the case of Ozan Lumber Co. vs. Union County Bank, 207 U. S. 251, the same court said, in dealing with a statute of the State of Arkansas:

"The plain purpose of the whole statute is to create and enforce a proper police regulation. * * * It is because such imaginary and unforseen cases are so rare that the gen-

eral classification ought not to be rendered invalid. In such case there is really no substantial denial of the equal protection of the laws within the meaning of the amendment. It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case, and a legislative ought not to be required to do so at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the laws. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things."

And again, in Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78, it is said:

"The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. When the [fol. 18] classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

And in Watson vs. Nevin, 128 U. S. 582:

"Whenever a law operates alike on all persons and property similarly situated, equal protection cannot be said to be denied."

The present law permits riparian owners with more than 500 yards of water frontage on the Potomac River to erect blinds out in the water opposite their property,

provided such blinds be at least 500 yards apart, and not closer than 250 yards to the division line of the adjoining property, without the consent of the adjoining landowner, while it denies that privilege to riparian owners having less than 500 yards frontage on said river. The question is: Is such classification so arbitrary and unreasonable as to warrant the Court in striking it down as being repugnant to the 14th Amendment of the Federal Constitution? I think not. This legislation is passed in the interest of conservation of wild fowl, and at the same time protecting from injury those who are permitted to erect and shoot from blinds over the waters of the State. It must be conceded by all that some regulation, under the police power of the State, is necessary to attain these objects. This regulation is a legislative function. It may be that some, and possible the Court, would think that such a classification permitting only those who own 500 yards of water-front to erect blinds, is a greater requirement than ought to be exacted. But when the case presented is one on or even near the border line, the legislature is the proper judge of what the requirement should be. I am of the opinion that the regulation contained in the present law has a substantial and reasonable relation to the object sought to be attained by the Legislature, and it was therefore competent for it to validly enact such legislation. When we look at the whole of the act, we find the legislative purpose to be conservation of wild fowl by regulation of the time and conditions in which and under which they may be lawfully killed. In attaining this object the Legislature seems to have had in mind, and as far [fol. 19] as it is possible for the paramount object to permit, it has undertaken to preserve the rights of riparian owners of all classes, whether large or small. There is no discrimination between owners of land of the same frontage in the same local locality. By Sec. 40 of Art. 99 it is provided that all owners of riparian rights, their lessees or licensees on the waters of this State shall by virtue of said ownership be first entitled to make a choice of the set or position in front of the property of which they are the owners, provided they shall avail themselves of said choice of locality and clearly mark the same on said waters by erecting a stake on which shall appear the license number of each blind and the licensee's name, on or before

October 10 of each and every year, and for the protection of shore owners desiring to locate a blind on their shore, the purchase of a license and the establishment of a stake, on which shall be painted the license number and the name of the licensee, such stake not to exceed the lawful distance from the shore, and be established in the water, when said stake shall be established on or before October 10, then it shall be termed as a blind. This provision of the law guarantees the right of every owner of waterfront property, no matter what his shore frontage is, to erect a blind on the shore of his property and secure to himself an unobstructed expanse of water at least 500 yards in width, over which water fowl may proceed, unmolested by the erection of any other blind, to the blind of the owner located upon the shore.

For the reasons stated, I am of the opinion that the law attacked here does not violate any of the provisions of the Federal or State Constitutions, but is a proper and legitimate exercise of the police power of this State in the attainment of the object sought by the Legislature, and therefore the injunction sought must be refused and the bill dismissed.

W. Mitchell Digges.

In Circuit Court of Charles County

Judgment—Filed Dec. 13, 1929

This cause coming on for hearing upon bill and answer, after argument by counsel, the proceedings were read and considered.

[fol. 20] Whereupon it is this 13th day of December, 1929, for the reasons stated in the opinion filed herewith:

Adjudged, ordered and decreed by the Circuit Court for Charles County that the prayer for injunction in this case be and the same is hereby denied and the bill dismissed, with costs to the defendants.

W. Mitchell Digges.

IN CIRCUIT COURT OF CHARLES COUNTY

NOTE OF APPEAL—Filed Feb. 11, 1930

Mr. Clerk:

Please enter an appeal from the decree in this cause dated the 13th day of December, 1929.

J. Read Bailey, Chas. Linkins, Solicitors for Plaintiff.

Feb. 11th, 1930.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 21] IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

General Docket, No. 30

THOMAS M. WAMPLER, Appellant,

vs.

E. LEE LECOMPTE, FREDERICK S. BARBER, Appellees

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed Aug. 4, 1930

To the Honorable the Chief Justice and Associate Justices of the Court of Appeals of Maryland:

The petitioner, Thomas M. Wampler, respectfully shows unto this Honorable Court that in the record and proceedings and rendition of the decree in the above cause by the Court of Appeals of Maryland, it being the highest Court of said State in which a decision could be had in the said suit between Thomas M. Wampler vs. E. Lee LeCompte and Frederick S. Barber, No. 30 on the calendar of April term, 1930, of the Court of Appeals of Maryland, manifest error has occurred greatly to his damage and whereby he is aggrieved.

Petitioner shows that in the record and proceedings it appears that there was drawn in question the validity of

Sections 40, 41 and 46 of Article 99, of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game; subtitle, Water Fowl and Migratory Birds, and it is claimed that the said sections are repugnant to and in violation of the 14th Amendment of the Constitution of the United States, in that it denies to the petitioner the equal protection of the laws under the Constitution of the United States, and that the said sections deprive the petitioner of his property without due process of law, and the decision of the said Court of Appeals of Maryland was in favor of the validity of said statute.

Wherefore the petitioner prays that an appeal be allowed to the Supreme Court of the United States, and that a transcript of the record, proceedings and papers upon which the said decision of the Court of Appeals of Mary-
[fol. 22] land was made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said Court as in such case is made and provided that the same may be inspected and corrected as according to law and justice should be done.

Thomas M. Wampler, in Propria Persona.

[fols. 23 & 23½] In Court of Appeals of Maryland

[Title omitted]

Order Allowing Appeal to Supreme Court of the United States—Filed Aug. 4, 1930

On this 2nd day of August, 1930, came on to be heard the application of Thomas M. Wampler, appellant, appearing in proper person, for an appeal from the judgment of this Court herein, to the Supreme Court of the United States, and it appearing to the Court from the petition filed herein, that the application ought to be granted, and that a transcript of the record and proceedings upon which the judgment of this Court was rendered, properly certified, should be sent to the Supreme Court of the United States as prayed for in the said petition, that such proceedings may be had as may be just and proper in the premises.

It is therefore ordered that the appeal be allowed upon the appellant giving bond, conditioned as the law directs, in the sum of Five Hundred Dollars, ($500), and that a true copy of the record, assignment of errors, and all proceedings had in this case in the Court of Appeals of Maryland shall be transmitted to the Supreme Court of the United States, properly certified as the law directs, that the said Court may inspect the same and do what according to law should be done.

Carroll T. Bond, Chief Judge of the Court of Appeals of Maryland.

[fol. 24] In Court of Appeals of Maryland

[Title omitted]

Assignments of Error—Filed August 8, 1930

Now comes Thomas M. Wampler, the plaintiff in error in the above entitled cause, and with reference to his petition for an appeal in this case, to the Supreme Court of the United States, assigns the following errors, which the plaintiff in error avers occurred on the trial thereof and upon which he relies to reverse the judgment entered herein as appears in record.

1. The Court of Appeals of Maryland erred in affirming the judgment of the Circuit Court for Charles County, Maryland, dismissing the bill of the plaintiff in error.

2. The Court erred in holding that the statute of Maryland, Sections 40, 41 and 46 [illegible], of the Code of Public General Laws of [illegible]e, Water Fowl, Birds and Game, was not [illegible] with and in violation of the 14th Amendment to the Constitution of the United States.

Thomas M. Wampler, in Propria Persona.

[fol. 25] Citation, in usual form, showing service on R. H. Archer, omitted in printing.

[fol. 26] Bond on appeal for $500.00, approved and filed August 13, 1930, omitted in printing.

[fol. 27] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

NOTICE IN THE MATTER OF THE APPEAL IN THE ABOVE SUIT TO THE SUPREME COURT OF THE UNITED STATES

To E. Lee LeCompte and Frederick S. Barber, Thomas H. Robinson, Attorney General of Maryland; Robert H. Archer, Assistant Attorney General of Maryland, attorneys for the said appellees:

This is to notify you that the Appellant will require the Clerk of the Court of Appeals of Maryland, to duly certify to the Clerk of the Supreme Court of the United States the entire printed record in said suit, and all proceedings in said suit, subsequent to the filing of said record in said Court of Appeals, and also the original citation, giving notice to the Appellees of the allowance of said appeal.

T. M. Wampler, In Propria Persona.

Service of the above notice and præcipe admitted this 15th day of August, 1930.

Thos. H. Robinson, R. H. Archer, Attorneys for the Appellee.

Filed August 19th, 1930.

[fol. 28] IN COURT OF APPEALS OF MARYLAND

[Title omitted]

Appeal from the Circuit Court for Charles County.
Filed March 13th, 1930.
May 22nd, 1930, decree affirmed, with costs.
Opinion filed.
Op., Pattison, J.
To be reported.
June 12th, 1930, decree filed.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 29] IN COURT OF APPEALS OF MARYLAND

THOMAS M. WAMPLER

vs.

E. LEE LECOMPTE

JUDGMENT—Filed June 12, 1930

The appeal in the above case standing ready for hearing, was argued by counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon this 12th day of June, 1930, by the Court of Appeals of Maryland, and by the authority thereof, adjudged, ordered and decreed that the decree dated December 13th, 1929, of the Circuit Court for Charles County be and the same is hereby affirmed, with costs.

Carroll T. Bond, Jno. R. Pattison, Hammond Urner, Wm. H. Adkins, T. Scott Offutt, F. Neal Parke, D. Lindley Sloan.

[fol. 30] No. 30, April Term, 1930

IN COURT OF APPEALS OF MARYLAND, APRIL TERM, 1930

No. 30

THOMAS M. WAMPLER

vs.

E. LEE LECOMPTE, State Game Warden of Maryland, and Frederick S. Barber, District Deputy Game Warden for Charles County

Judge Pattison delivered the opinion of the Court.

OPINION—Filed May 22, 1930

The appeal in this case is from a decree of the Circuit Court for Charles County, dismissing the bill of the appellant, Thomas M. Wampler, a resident of that county, and the owner of a parcel of land, in Charles County, bordering upon the Potomac River.

The bill alleges that E. Lee LeCompte, and Frederick S. Barber, the appellees, destroyed a booby, brush or stake blind of the appellant, located and erected by him in the Potomac River, in front of his shore line, not more than 300 feet therefrom, after having first procured a license therefor, as provided by law. That the appellees not only destroyed his blind, so erected, but they threatened to destroy and to continue to destroy, any blind that he might thereafter erect at that location, and the bill asked that the appellees be restrained from molesting, or interfering with the appellant in again locating, or erecting and maintaining a blind at such place.

The appellees, E. Lee LeCompte, State Game Warden, and Frederick S. Barber, Deputy District Game Warden, answered the bill, averring therein, that what they did as alleged by the appellant in his bill, was lawfully done by them, as officers, in the enforcement of Secs. 40, 41 and 46 [fol. 31] of Art. 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game; sub-title, Water Fowl and Migratory Birds; the provisions of which the appellant contends violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

Section 40, of Art. 99, provides, that all owners of riparian rights on the waters of this State, shall by virtue of said ownership be first entitled to make a choice of position in front of their property for the purpose of erecting and maintaining a booby, brush or stake blind, provided they avail themselves of such right by obtaining a license therefor, as required by Section 44, of said Art. and by marking the location and erecting the blind in the manner and within the times therein stated.

Section 41 of said Article, provides, that it shall be unlawful to erect or maintain any blind at a greater distance than 300 yards from the natural shore from which same may be erected; and not less than five hundred yards apart measured in a straight line, except "in the tributaries of the Chesapeake Bay and in the tributaries of the Potomac River in Charles County and on the waters of Baltimore County", where "said blinds shall not be less than 250 yards apart, measured in a straight line."

Section 46 of said Article provides that "Whenever an owner of land bordering on any waters of this State shall

desire to erect a booby, brush or stake blind in front of his property, or other person to whom he shall give permission, he shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters (the distance contained herein shall not apply to the waters that are tributary of the Chesapeake Bay and the Potomac River in the Counties of Charles, Calvert and St. Mary's) meaning a line extending out over the waters drawn direct from the dividing line of said properties at the shore line, unless with the consent of the adjoining landowner, same being for the purpose of allowing each landowner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting and maintaining a booby, brush or stake blind in front of his property."

[fol. 32] The question thus raised by this appeal, is whether the above Sections of the Public General Laws of Maryland violate the Federal Constitution.

These and other sections of Art. 99 of the Code were enacted to regulate the killing of Water Fowl in the waters of the State of Maryland, and were so enacted in the exercise of the police power of the State. The contention is, that these provisions of the Statute are arbitrary in their classification and consequently deny the equal protection of law to those whom they affect.

As stated in Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78:

"The rules by which this contention must be stated, as is shown by repeated decisions of this court, are these:

1. The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that

would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Bachtel v. Wilson, 204 U. S. 36-41; Louisville & N. R. Co. v. Melton, 218 U. S. 36; Ozan Lumber Co. v. Union County Nat. Bank, 207 U. S. 251; Munn v. Illinois, 94 U. S. 113; Henderson Bridge Co. v. Henderson, 173 U. S. 582, 615.

The Statute here assailed gives to the owners of land in this State, subject to the regulations therein contained, certain gunning privileges on the waters in front of their lands, if exercised by them within the time prescribed by the Statute, but should they fail to avail themselves of such privileges within the time allotted them, they pass to others, who may thereafter conform to the requirements of the Statute. The validity of these privileges, revocable at any [fol. 33] time by legislative enactment, was recognized by this Court in the case of Sheehy v. Thomas, 155 Md. 688; and similar statutes granting like privileges to land owners to use the waters and the bottoms thereunder in catching fish and in the cultivation and taking of oysters, have also been held valid by this Court. Dean v. Clacum, 149 Md. 578.

The State has the undoubted right, subject to the laws of the United States, in respect to navigation, to regulate the killing of water fowl from blinds erected in the waters of this State, so long as it makes no unreasonable and unfounded general classification denying any person the equal protection of the law. In Jeffry Mfg. Co. v. Blagg, 235 U. S. 576, the court said:

"This Court has many times affirmed the general proposition that it is not the purpose of the 14th Amendment in the equal protection clause to take from the States the right and power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the Court can declare it beyond the legislative authority."

The provisions of the Statute making it unlawful to erect blinds in the waters of this state, at a greater distance than 300 yards from the shore and not less than 500 yards apart,

measured in a straight line, were enacted for the conservation of water fowl and the protection and safety of those engaged in shooting them. The necessity for such regulation is apparent, for if blinds could be erected in broad waters at any distance from the shore, without regard to the distance separating them, it would not only be conducive to the destruction and annihilation of ducks and other water fowl, but extremely dangerous to those shooting them.

If all owners of land bordering upon the waters of this State, including those whose shore lines are less than five hundred yards, were granted the privileges mentioned in the Statute, there would not be a compliance with its provisions that blinds should not be erected less than 500 yards apart, or closer than 250 yards from the lines of the adjoining land owners, which provisions were thought necessary by the Legislature for the purposes above stated. [fol. 34] The Legislature in its desire to extend the privileges conferred by the Statute, wherever possible, without violating the objects and purposes of the Statute, to owners having a frontage upon the water of less than 500 yards, inserted in the Statute the provision that an owner of land, with the consent of the adjoining land owners, could avail himself of the privileges of erecting and maintaining a blind in front of his land. This provision, of course, was subject to the further provision that the blind when so erected should not be less than 250 yards from the lines of an owner whose consent he had not obtained, and not closer than 500 yards to the nearest blind erected in accordance with the provisions of the Statute.

The location of the blind here sought to be erected by the appellant was in the waters of the Potomac river, where, by the Statute, blinds were not to be erected less than 500 yards apart. The land owned by him bordered upon said river for a distance of only 43 7 10 feet. Therefore, he had to acquire the permission or consent of owners of land bordering upon said river extending thereon for a distance of at least 250 yards on each side of the position at which his proposed blind was to be located, before he could avail himself of the privileges of the Statute. It was because of his inability or failure to obtain such permission or consent, that he was not permitted to erect

a blind in front of his land. This fact he complains of, contending that the discrimination resulting from the provisions of the Statute whereby those obtaining the necessary consent could erect a blind and those who could not obtain such permission or consent could not erect one, was an unlawful discrimination against the latter.

That the right of an owner, having a shore frontage less than five hundred yards, to erect and maintain a blind in the waters in front of his land is by the Statute made dependent upon his ability to obtain the consent of adjoining land owners does not render the Statute unconstitutional. If as thought by the appellant, his inability to obtain such consent is a hardship or inequality upon him such fact does not warrant us in holding that the Statute contravenes the Constitution. In Jeffry v. Blagg, supra, the court said [fol. 35] "that a law may work hardship and inequality is not enough. Many valid laws from the generality of their application necessarily do that, and the Legislature must be allowed a wide field of choice in determining the subject matter of its laws, what shall come within them, and what shall be excluded."

It is also contended by the appellant that the Federal Constitution is violated by the provisions of the Statute which provides that blinds when erected in certain inland waters of the State need not be further apart than 250 yards. Why these provisions were inserted in the Statute we are not informed, but we may assume, until the contrary is shown, that a state of facts in respects thereto, existed, which warranted the legislature in so legislating. In Lindsley vs. Natural Carbonic Gas Co. 220 U. S. 78, supra, the court said, "If any state of facts, can reasonably be conceived that would sustain it, the existence of that state of facts at the time the law was ena-ted must be assumed" and "one who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

As to the waters of the Potomac River in Maryland, the privileges mentioned in the Statute are conferrd upon the owners of land bordering upon said waters for the distance of at least five hundred yards, or upon those owners with less shore frontage, having the consent of adjoining and nearby owners, who, with them, have in the aggregate an

unbroken shore line of at least five hundred yards, to erect blinds in front of the lands of such owners or in front of their own lands. This classification reasonably conserves the objects which the legislature had in view in the enactment of the Statute, the conservation of wild fowl and the protection of those hunting or shooting them, and it is not, in our opinion, arbitrary or unreasonable.

Therefore the decree denying the injunction and dismissing the bill will be affirmed.

Decree affirmed, with costs.

Filed May 22, 1930. True copy. Test: James A. Young, Clerk of the Court of Appeals of Maryland.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 37 & 37a] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Sept. 9, 1930

To the Clerk of the Supreme Court of the United States:

1. In the matter of the preparation of the Record in this case, the appellant intends to rely upon the Assignment of Errors filed herein.

2. The entire Record is necessary for the consideration of the questions in law raised by the Assignment of Errors, except the plat of land, which omit.

Thomas M. Wampler, Thomas M. Wampler, In Proper Person.

Service of a copy of the above is acknowledged this 9th day of September, 1930.

Robert H. Archer, per W. R. J., Counsel for Appellees.

[File endorsement omitted.]

[fols. 38 & 38a] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PART OF RECORD TO BE PRINTED —Filed Sept. 11, 1930

To the Clerk of the Supreme Court of the United States:

In the matter of the preparation of the Record in this case the Appellees request that there be included the plat of land referred to in the præcipe heretofore filed by the Appellant.

Thos. H. Robinson, Robert H. Archer, W. S. Marbury, Jr., Counsel for Appellees.

[File endorsement omitted.]

Endorsed on cover: File No. 35,324. Maryland Court of Appeals. Term No. 402. Thomas M. Wampler, appellant, vs. E. Lee Lecompte, State Game Warden of Maryland, and Frederick S. Barber, District Deputy, etc. Filed August 28, 1930. File No. 35,324.

(7)

FILE COPY

SEP 15 1930

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE,
FREDERICK S. BARBER,
Appellees.

PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

THOMAS M. WAMPLER,
In proper person.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE,
FREDERICK S. BARBER,
Appellees.

PRINTED STATEMENT COMPLYING WITH RULE 12 OF THE COURT.

A. The statutory provision which sustains the jurisdiction of this Court is Sec. 344, Title 28, U. S. Code Anno. (Judicial Code, Sec. 237) providing for jurisdiction of the Supreme Court where the validity of the statute of a State is drawn in question as being repugnant to the Fourteenth Amendment to the Constitution of the United States, and the decision of the

highest Court of the State was in favor of the validity of the statute.

B. The judgment of the State Court was rendered on the 12th day of June, 1930, and is found on page 29 of the transcript filed in this Court, printed record, page ——

The date on which the application for appeal was presented was the 2nd day of August, 1930, and is found on page 23 of the transcript filed with the Clerk, and on page .... of the printed record.

C. Nature of the case. This was a bill for an injunction to enjoin and restrain the appellees from interfering with the erection, maintenance and lawful use of a ducking blind, of the appellant, located and to be located in the waters of the Potomac River in front of the property of the appellant. The acts of appellees, who happened to be the State Game Warden and a Deputy Game Warden of Maryland, were justified by them by virtue of the statute of Maryland, Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game. The sole question involved in the suit is the validity of this statute. Its validity is challenged by appellant upon the ground that the said statute denied to appellant the equal protection of the laws, and due process of law, required and enjoined by the Fourteenth Amendment to the Constitution of the United States, and arbitrarily discriminated against him in violation of said amendment to said Constitution.

Appeal was taken from the Circuit Court of Charles County, Maryland, which held the statute valid, to the Court of Appeals of Maryland, which Court also sustained the validity of the statute.

All of which appears in the Assignment of Errors and Statement of Points, filed in this Court on the 9th day of September, 1930, and on pages 4, 7-11 of the transcript filed with the Clerk, printed record, page ....

The points aforesaid, upon which the jurisdiction of this Court is based, were made by the pleadings in the Circuit Court of Charles County, Maryland, and the Court of Appeals of Maryland, as appears from the transcript filed with the Clerk, pages 4-11, printed record, pages ....

D. The validity of a state statute being directly attacked as being repugnant to the Fourteenth Amendment of the Constitution of the United States, and the decision of the highest Court of the State being in favor of its validity, Sec. 344 U. S. C. A. (Judicial Code Sec. 237) directly, in terms confers jurisdiction.

Respectfully submitted,

THOMAS M. WAMPLER,
In proper person.

FILE COPY

NOV 6 1930
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE, FREDERICK S. BARBER, *Appellees*.

Appeal from the Court of Appeals of Maryland.

BRIEF FOR APPELLANT

and

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

THOMAS MORRIS WAMPLER,
In Propria Persona.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
STATEMENT OF CASE	1
ERROR ASSIGNED	3
OPINION OF TRIAL COURT	3
OPINION OF COURT OF APPEALS OF MARYLAND, 150 Atl. 455	3
ARGUMENT	3
Object and Purpose of Statute	4
Statute is Discriminatory and Class Legislation.	7
CONCLUSION	13
APPENDIX	14
Sec. 40	14
Sec. 41	15
Sec. 46	16

TABLE OF CASES.

Atchison, etc., R. Co. vs. Vosberg, 238 U. S. 56	9
Bedford Quarries Co. vs. Bough, 168 Ind. 671	9
Ex parte Martin, 157 Cal. 51	9
Gustafson vs. State (Tex.), 43 L. R. A. at p. 617	11
Hampton vs. Columbia, etc., Co., 3 Alaska 100	11
Harker vs. Galloway (Fla.), 51 So. 226	10
Hume vs. Rogue River, etc., Co., 51 Ore. 237	8, 11
Maercker vs. Milwaukee, 151 Wis. 324	11
Re: Day, 181 Ill. 73	9
State vs. Hill (Miss.), 53 So. 411	11
State vs. Leavitt, 105 Maine 76	9
State vs. Loomis, 115 Missouri 307	9
Sutter vs. Heckman, 1 Alaska 81	11
Appendix	14
Public General Laws of Maryland, Article 99:	
Sec. 40	14
Sec. 41	15
Sec. 46	16

IN THE

Supreme Court of the United States

OCTOBER TERM 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE, FREDERICK S. BARBER, *Appellees*.

Appeal from the Court of Appeals of Maryland.

BRIEF FOR APPELLANT
and
BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

STATEMENT OF CASE.

This appeal is from a judgment of the Court of Appeals of Maryland affirming a decree of the lower court dismissing the appellant's Bill in Equity.

The sole question presented for the consideration and determination of this Honorable Court is the validity of

Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game.

The appellant filed his Bill against Edwin Lee LeCompte and Frederick S. Barber, (they happened to be the State Game Warden and Deputy Game Warden of Maryland, respectively) but were sued as individuals. (R. p. 1.)

The Bill prayed an injunction against the Appellees to prevent them from molesting or interferring with the erection, maintenance and lawful use of a ducking blind, located and to be located, in the waters of the Potomac River in Maryland, in front of the property of appellant. The Bill alleges the due issuance on June 3rd, 1929, of a license to appellant, as provided by law, to set, erect and maintain a stationary booby, brush or stake blind in the Potomac River, for the purpose of hunting wild water fowl; the erection of such a blind in accordance with law, on the 4th day of October, 1929; and that the appellees on or about the 11th day of October, 1929, unlawfully destroyed said blind, and that the appellees threatened to prevent the appellant from again lawfully erecting said blind, and have threatened to destroy and to continue to destroy the said blind, whenever the appellant tries to again erect the same, and also to prevent the use thereof. (R. p. 2.)

The appellees in their answer to the Bill seek to justify their action under and by virtue of Sections 40, 41 and 46 of the Statute hereafter referred to and set forth. (Appendix, pp. 14-16.)

The case was heard on Bill and Answer. (R. pp. 1-4.)

The appellant's blind was erected prior to October 10th; it was within 250 yards of the dividing line between his and adjoining property, and was less than 500 yards from the nearest blind. (R. p. 2.)

The trial Court dismissed the appellant's Bill, which directly attacked the constitutionality of the above sections of the Statute, holding them to be valid. (R. p.

13.) The Court of Appeals of Maryland affirmed the decision of the lower court, which decision is not officially reported but is found in 150 Atl. 455.

ERROR ASSIGNED.

It is submitted the Court of Appeals of Maryland erred in holding constitutional Secs. 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, Title, Water Fowl, Birds and Game.

OPINIONS OF COURTS BELOW.

The opinion of the Circuit Court for Charles County, Maryland, is found on page 8 of the Record.

The opinion of the Court of Appeals of Maryland, which is not officially reported is to be found on page 18 of the Record and also in 150 Atl. Rep. 455.

ARGUMENT.

The sections of the Statute herein assailed as unconstitutional, are Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland set out in full in the appendix, pages 14-16.

> Sec. 40. Provides that owners of riparian rights shall be first entitled to make a choice of position of the blind in front of their property; (subject to the limitations of Sections 41 and 46.)
>
> Sec. 41. Limits distance of blind from shore to 300 yards, and distance between blinds 500 yards.
>
> Sec. 46. Limits blinds to within 250 yards of the dividing line of adjoining owner, *"unless with the consent of the adjoining land owner."*

These sections of the Statute are arbitrary, discriminatory, deny equal protection of the laws, and amount to class legislation.

States may unquestionably regulate the taking of game

subject to the limitation, that when the state undertakes to regulate, it must not establish classifications among its citizens, or property owners, which are arbitrary and discriminatory, and which classifications do not reasonably conserve the object which the Legislature had in view.

OBJECT AND PURPOSE OF STATUTE.

The Court of Appeals of Maryland, in its decision, states the objects which the Legislature had in view in the enactment of the Statute to be, "*the conservation of wild fowl and the protection of those hunting or shooting them.*" (R. p. 24.)

If this be the object the Legislature had in view in the enactment of the legislation herein challenged, then such legislation is void, because if *the provision with respect to the 250-yard limit from a neighbor's land was placed in the statute for the purpose of conservation of game, then that is inconsistent with the provision giving the adjoining land-owner the right to waive the same; if the 250-yard limit was placed in the statute for the protection of human life and property then it is inconsistent with the provision giving an adjoining land-owner the right to waive it.*

Therefore, it becomes manifest that the Legislature has definitely determined that the 250-yard limit has absolutely nothing to do either with the conservation of game or the protection of life or property.

It follows, therefore, that the 250-yard limit is an arbitrary provision for the benefit of the large river front land-owner and a denial of equal privileges to the small river front land-owner.

The lower Court states the objects which the Legislature had in view in the enactment of the statute, to be

> "the conservation of wild fowl and the protection of those hunting or shooting them." (R. p. 24.)

If the 250-yard limit was inserted in the statute for the above purpose what reason can be advanced for the right given an adjoining land-owner to waive the same unless it be that the provision was inserted for the benefit of the rich to the detriment of the poor; for the benefit of the large land-owner to the detriment of the citizen who is not so fortunate.

The State is unquestionably the trustee for all its citizens, in the enjoyment of the right to take migratory waterfowl, but can it, in deference to the common right of its people, legislate, as it has attempted to do in paragraph (a) of Section 46, *and delegate to adjoining owners of shore-front property the right to waive the requirement to erect blinds within 250 yards of neighbors' projected lines?* If it has such right, several friendly owners, whose individual shore frontages are too short to admit of the erection of a blind, by combining, can enjoy such privileges, while an owner, who is unfortunate enough to have neighbors who will not co-operate with him, for no good reason at all, can be precluded from the enjoyment of such privileges, thus thwarting the very purposes of the Legislature, expressed in the language:

> "* * * same being for the purpose of allowing each land-owner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting or maintaining a booby, brush or stake blind in front of his property."

Again paragraph (a) of Section 46, creates arbitrary classes, for under its provisions owners of shore-front property on the tributaries in Charles County are exempted from the provision that their blinds shall be 250 yards from their neighbors' projected lines, while similar owners in the tributaries of the Potomac, in Prince George's County (notably Broad Creek) and in St. Mary's County, must observe such provision.

The center of Wicomico River, for some distance from

its mouth, is the dividing line between Charles and St. Mary's Counties. So that the game laws permit the owners of shore front on the western bank of that river to erect duck blinds within 250 yards of their neighbors' lines, while owners of shore-front property on the eastern bank must keep their blinds 250 yards from the projected lines of their neighbors.

The lower court says in its opinion, upholding the validity of the Statute, that its purpose is the conservation of wild fowl, and protection of those hunting them (R. p. 24), nevertheless this same Statute gives an adjoining land owner the right to brush aside and set at naught a legislative enactment, enacted for the protection of human life.

A. Protection of Human Life.

To give an adjoining land owner the right to waive, to set aside a legislative enactment, enacted for the protection of human life, is inconsistent with the announced purpose of the legislation, and is entirely consistent with the claim here asserted that it is class legislation and discriminatory.

It delegates to a land owner the right to strike down a barrier erected by the Legislature, for the protection of human life, in order to accommodate his friend, in shooting ducks, regardless of human life.

If the provisions of the Statute requiring duck blinds to be within 250 yards from an adjoining land owner, are for the protection of human life, then this is not a requirement having a fair and substantial relation to the object sought to be accomplished by the Legislature: it is not a requirement germane to the legitimate object of the legislation, because the right to waive, and strike down, and disregard such legislation, enacted for the protection of human life, is delegated to the adjoining land owner.

Likewise if the 250 yard limit from an adjoining land owner is proper for the protection of human life in creeks,

which are usually narrow, the channel being close to both shores, such limit of 250 yards is equally sufficient for such protection in the Potomac River.

B. Conservation of Wild Fowl.

It at once becomes apparent, upon slight reflection, even to those not familiar with the sport of hunting ducks, that with duck blinds 500 yards apart, there will be more ducks decoyed within gun shot range, and therefore more shooting, and more ducks killed, than would be the case with blinds 250 yards apart, with a greatly reduced number of ducks decoyed within gun shot range; ducks become shy of the many blinds and the movement in and about the same; the very presence of the blinds close together cause this suspicious kind to avoid them. The most alert, wary, suspicious, cautious; the most easily frightened bird, is the wild duck.

Therefore it follows—the lesser number of blinds, the more ducks decoyed, more shooting and more ducks killed: the greater number of blinds, the less number of ducks decoyed, the less shooting and the least number of ducks killed.

Statute is Discriminatory and Class Legislation.

Is the 250 yard distance from the division lines of property owners, in furtherance of "conservation of wild fowl", or "the protection of those hunting or shooting them," or both. It cannot be successfully contended that this provision of the law has either as its object.

By what authority can the Legislature delegate to a resident or a non-resident riparian owner, the exercise of the Police Power of the State, over the waters and the land thereunder, the State's domain.

If this 250 yard distance has any reasonable relation to the objects of the legislation, why are riparian owners on the creeks in Charles County exempted from this requirement, while riparian owners on creeks in Prince George's

and St. Mary's Counties, and on the Potomac River, are required to observe this 250 yard limitation.

Unless some reason can be found from this legislation for the requirement that blinds shall be 500 yards apart in the River, and not less than 250 yards from division lines of riparian owners, both requirements are arbitrary, and the classifications, having no fair and substantial relation to the object sought to be accomplished by the legislation, are unconstitutional, and the acts are class legislation, favoring the rich as against the poor; favoring the larger riparian land-owners against the less fortunate neighbor.

That the state could prohibit *to all* the right to shoot wild fowl, is not here involved. The state has seen fit to permit the enjoyment of that right, and we are only concerned with the fact that it has endeavored to regulate the subject unlawfully so as to deny, both under the State and Federal Constitutions, equal protection of the laws. Sections 41 and 46 are unconstitutional and create arbitrary and unreasonable classes, having no fair and substantial relation to the subject of the legislation—conservation of wild fowl, and protection of those hunting them.

Again, owners of blinds on Chesapeake Bay in Anne Arundel County, prior to January 1, 1927, are given perpetual enjoyment rights; while blinds located in the waters of Anne Arundel County, after said date must comply with section 40 paragraph (c).

On the question that owners of licenses in the waters of Anne Arundel County, prior to January 1, 1927, are practically given a monopoly see Hume v. Roque River Packing Co., 51 Oregon 237, where it was held that an exclusive right of fishery cannot be granted by the legislature, to a shore owner in the tide land in front of his property, for it creates a monopoly.

The laws, (Sections 40, 41, and 46) are discriminatory and are class legislation.

An owner of tributary frontage is exempted from setting his blind at least 250 yards from his neighbor's dividing line; tributary blinds can be placed 250 yards apart; while Potomac River frontage owners must set their blinds 250 yards from the dividing lines of adjoining owners, and can only enjoy the privileges of duck hunting, if they have a frontage of 500 yards plus the width of their blinds.

It cannot be successfully maintained that these various discriminatory provisions have been made the law of the State for the purpose of conservation of wild fowl or the protection of those shooting them.

If blinds in tributaries are at a safe distance as regards the public and property, when they are but 250 yards apart, then blinds in the Rivers specified and in Chesapeake Bay are at such safe distance when but 250 yards apart. If conservation of wild fowl is satisfied by that distance in the tributary streams, then that same distance between blinds in the Rivers specified and in the Chesapeake Bay, satisfies the conservation intent of the Legislature.

The constitutional guarantee of equal protection of laws, does not prevent classification, *but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation.*

Atchison T. & S. F. R. Co. v. Vosberg, 238 U. S. 56; 59 L. ed. 1199;
Re: Day, 181 Ill. 73;
State v. Loomis, 115 Mo. 307;
State v. Leavitt, 105 Me. 76.

In Bedford Quarries Co. v. Bough, 168 Ind. 671; 14 L. R. A. (N. S.) 418; the Court said that *the classification must furnish a reason for and justify the making of the class.*

In Ex parte Martin, 157 Cal. 51, the court said:

> "Although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, *it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.*"

In Harper v. Galloway, (Fla.) 51 So. 226; 26 L. R. A. (N. S.) 794: the plaintiff in error who was a resident of another County, was convicted for having violated a local game law passed by Marion County, Florida. This local game law favored residents of Marion County over the residents of other counties of the State. The Florida Supreme Court in holding the law unconstitutional, at page 798 of the decision as reported in L. R. A. (*supra*), says:

> "But when a statute designed for the protection of game, by its plain terms excludes from its benefits a portion of the residents of the State, *or imposes upon some of the residents of the State burdens not put upon other residents of the State with reference to the subject regulated, and there appear to be no real differences in conditions with reference to the regulation, to fairly justify the classification as made,* the Statute may in effect deny to residents of the State the equal protection of the laws in violation of the 14th amendment of the Federal Constitution." Citing authorities.

The general rule governing proper classification in police regulations requires that the classification *must be germane to the purpose of the law.* It must not be based upon existing circumstances only, or so constituted as to preclude additions to the number included within a class,

and the law must apply equally to each member of the class and all classifications must be based upon substantial distinctions which make one class different from another.

Maercker v. Milwaukee, 151 Wis. 324.

An exclusive right of fishery cannot be granted by the legislature to a shore owner in the tide land in front of his property, where the Constitution provides that no law shall be passed granting to any citizen any privilege which upon the same terms shall not equally belong to all citizens.

Hume v. Rogue River Packing Co., 51 Ore. 237.

The right of fishery in tidal waters is a public right common to all, and cannot be exclusive in any individual, whether he is owner of abutting upland or not.

Sutter v. Heckman, 1 Alaska, 81.
Hampton v. Columbia Canning Co., 3 Alaska, 100.

The legislature cannot, where the Constitution prohibits it from denying to any person within the jurisdiction of the state the equal protection of the laws, confer power upon the authorities of the county to protect the fish within the county for the benefit of the inhabitants of such county, and exclude residents of other counties from taking them.

State vs. Hill, (Miss.) 53 So. 411.

In Gustafson vs. State, (Tex.) 43 L. R. A. at p. 617, the Court said:

"We hold that the waters of the state, as well as all its domain of public lands, are equally open to all

> of its citizens upon the same terms and conditions, and that the attempt of the legislature to prohibit residents of the state who are not taxpayers, but who are willing to pay the license tax, from fishing in the public waters of the state, is violative of those provisions of the Constitution before mentioned."

Viewing section 46 alone, or with the other sections, the 250 yard limit has nothing to do with conservation of game or protection of life and property, for the legislature could certainly not delegate to the caprice or whim of land-owners, its police power as trustee for all its citizens.

Construing all these sections together, there is but one meaning they can be given, and that is that a riparian owner must have a shore frontage equal to 500 yards, plus the width of a blind, measured in a straight line, before he can either protect a shore blind or erect a water blind.

The expressed intention of the legislature, contained in the statute, Sec. 46, is therefore, meaningless.

The duck law does not guarantee River Shore owners of a frontage of less than 500 yards, the right to shoot ducks; if it did the appellant would not be involved in this litigation. He had a frontage of less than 500 yards; he obtained his license in due time (June 3, 1929) and erected his stake in due time before October 10th, 1929 (on October 4, 1929).

This stake was less than 250 yards from the adjoining owner's dividing line, and was less than 500 yards from the nearest blind. He complied with Section 40. The stake was destroyed by defendants as being unlawful.

True, Section 40 taken by itself, guarantees these rights to riparian owners, their lessees or licensees, but these rights are thereafter denied the small shore owners by Sec. 41 and 46, which endeavor to create two classes, and are unconstitutional.

CONCLUSION.

It is requested that the Court treat this brief as one in opposition to the Motion to Dismiss or Affirm filed by the Appellees herein, as well as the brief of Appellant upon this appeal.

It is submitted that the judgment of the lower court is erroneous and should be reversed.

Respectfully submitted,

THOMAS MORRIS WAMPLER,
In Propria Persona.

October 1930.

APPENDIX.

Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game, are as follows:

Duck Blinds—Riparian Owners.

Chapter 568, Acts of 1927, Sec. 39

40. All owners of riparian rights, their lessees or licensees on the waters of this State shall, by virtue of said ownership, be first entitled to make a choice of the "set" or position in front of the property of which they are the owners of the riparian rights, lessees or licensees, for the purpose to erect, set or maintain booby, brush or stake blind or blinds, provided, that said riparian owners, their lessees or licensees shall avail themselves of said choice of localities and clearly mark the same on said waters by erecting a stake, on which shall appear the license number of each blind and the licensee's name as hereinafter provided on or before October 10th of each and every year, and said blind or blinds licensed prior to October 10th must be erected on or before November 10th and said blind or blinds licensed after November 10th must be erected on or before twenty days thereafter, except as herein provided.

Protection of Shore Blinds.

(a) For the protection of shoreowners, their lessees or licensees, desiring to locate a blind or blinds on their shore, the purchase of a license as herein provided and the establishment of a stake on which shall be painted the license number and the name of the licensee, such stake not to exceed the lawful distance from shore and be established in the water, when said stake shall be established on or before October 10th, then said stake shall be termed as a blind as hereinafter provided.

Blinds in Certain Waters Prohibited.

Chapter 366, Acts of 1929.

(b) And be it further provided, that no booby, brush or stake blind shall be licensed or erected in the waters of

Chester River and its tributaries within the jurisdiction of Kent County, except Grey's Inn Creek, Comegy's Bight and between a line drawn from Beaver Dam in Hail Creek, Kent County, to Stoney Bar Bluff at the mouth of Jackson's Creek in Queen Anne's County, and Drum Point in Kent County; and no booby, brush or stake blind shall be licensed or erected in the waters of the Chesapeake Bay within the jurisdiction of Kent County between the north end of Hickory Thicket and the mouth of the Chester River.

Blinds in Anne Arundel County.

Chapter 366, Acts of 1929.

(c) And be is further provided, that this Section shall not apply to any person who has an established licensed blind or blinds located in the waters of Anne Arundel County or in the waters of the Chesapeake Bay opposite the shore line of said county prior to January 1st, 1927, and said licensee shall have the right to renew said license on or before the first day of July of each year thereafter.

Blinds in Certain Waters Prohibited.

Chapter 568, Acts of 1927.

(d) And be is further provided that no booby, brush or stake blind shall be licensed or erected in the waters of Bohemia River and its tributaries, within the jurisdiction of Cecil County.

Distance from Shore and Distance Apart.

Chapter 366, Acts of 1929, Sec. 40.

41. It shall be lawful in or over the waters to erect, set or maintain a booby, brush or stake blind, and same shall be stationary; in which shall be built a platform for the purpose of shooting from. It shall be unlawful to erect, set or maintain any blind at a greater distance than 300 yards from the natural shore, from which same may be erected. Said blinds shall not be less than 500 yards apart, measured in a straight line; provided, however, it shall be unlawful in or over the waters of Baltimore County to erect, set or maintain any blind at a greater distance than 150 yards from the natural shore.

Blinds on Rivers.

(a) It shall be unlawful on any of the rivers of this State for any person to erect, set or maintain a blind at a farther distance from the shore than one-half of said river where said river is less than 600 yards in width, nor shall any person place any blind on any of the rivers across any channel where said channel runs near the center of said river.

Blinds in Charles and Baltimore Counties.

(b) Provided, however, that in the tributaries of the Chesapeake Bay and in the tributaries of the Potomac River in Charles County and on the waters of Baltimore County said blinds shall not be less than 250 yards apart, measured in a straight line. However, the 250 yards as provided in Paragraph A of Section 45 of Chapter 568, Acts of 1927, shall not apply to Baltimore County.

Rights of Property Owners Bordering on Waters.

Chapter 568, Acts of 1927, Sec. 45.

46. Any person who shall obtain a license as provided for in this Article to erect a blind and the same may thereafter be destroyed in any manner beyond the control of the owner, shall have thirty days in which to replace or restore same without losing the set which the same formerly occupied.

(a) Whenver an owner of land bordering on any waters of this State shall desire to erect a booby, brush or stake blind in front of his property, or other person to whom he shall give permission, he shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters (the distance contained herein shall not apply to the waters that are tributary of the Chesapeake Bay and the Potomac River in the county of Charles, meaning a line extending out over the waters drawn direct from the dividing line of said properties at the shore line, unless with the consent of the adjoining landowner, same being for the purpose of allowing each landowner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting or maintaining a booby, brush or stake blind in front of his property.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 402.

THOMAS M. WAMPLER,
Appellant,

versus

EDWIN LEE LECOMPTE, FREDERICK S. BARBER,
Appellees.

MOTION OF APPELLEES TO DISMISS OR AFFIRM.

ROBERT H. ARCHER,
WILLIAM L. MARBURY, JR.,
Counsel for Appellees.

In The

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EDWIN LEE LECOMPTE, FREDERICK S. BARBER,
Appellees.

MOTION OF APPELLEES TO DISMISS OR AFFIRM.

Come now the appellees in the above entitled cause, by their counsel of record, and move that the appeal herein be dismissed or that the judgment of the Court of Appeals of Maryland be affirmed for the reason that the questions on which the decision in this case depends, are so unsubstantial as not to need further argument, and do not present any substantial federal question.

ROBERT H. ARCHER,

WILLIAM L. MARBURY, JR.,

Counsel for Appellees.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

This case originated in the Circuit Court for Charles County, Maryland, and comes to this Court from the Court of Appeals of that state. As appears from the assignments of error heretofore filed by the appellant, reliance is placed solely on the contention that Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland are in conflict with the Fourteenth Amendment to the Constitution of the United States. These sections are part of a complete revision of all the conservation laws of Maryland, and appear under the sub-title "Water Fowl and Migratory Birds. Use of Boats Prohibited. Blinds," this sub-title consisting of Sections 38 to 49, inclusive, of Article 99 of the Code. (See *Bagby's Annotated Code of Maryland*, 1929 Supplement). The sections particularly complained of are printed as an Appendix hereto. Their purport is stated by the Court of Appeals in the decision below (not officially reported; see 150 Atl. 455), as follows:

"Section 40 of Article 99 provides that all owners of riparian rights on the waters of this state shall by virtue of said ownership be first entitled to make a choice of position in front of their property for the purpose of erecting and maintaining a booby, brush or stake blind, provided they avail themselves of such right by obtaining a license therefor, as required by Section 44 of said Article and by marking the location and erecting the blind in the manner and within the times therein stated.

"Section 41 of said Article provides that it shall be unlawful to erect or maintain any blind at a greater dis-

tance than 300 yards from the natural shore from which same may be erected; and not less than five hundred yards apart measured in a straight line, except 'in the tributaries of the Chesapeake Bay and in the tributaries of the Potomac River in Charles County and on the waters of Baltimore County,' where 'said blinds shall not be less than 250 yards apart, measured in a straight line.'

"Section 46 of said Article provides that 'whenever an owner of land bordering on any waters of this State shall desire to erect a booby, brush or stake blind in front of his property, or other person to whom he shall give permission, he shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters (the distance contained herein shall not apply to the waters that are tributary of the Chesapeake Bay and the Potomac River in the Counties of Charles, Calvert and St. Mary's) meaning a line extending out over the waters drawn direct from the dividing line of said properties at the shore line, unless with the consent of the adjoining landowner, same being for the purpose of allowing each landowner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting or maintaining a booby, brush or stake blind in front of his property."

The appellant objects to these provisions on two grounds:

(a) Because of discrimination between the waters that are tributary to the Chesapeake Bay and the Potomac River in the counties of Charles, Calvert and St. Mary's, and the other waters of the state;

(b) Because of the prohibition against the erection of any blind within 250 yards of the division line, which may be waived by the adjoining owner.

These contentions, it is respectfully submitted, have been fully answered by prior decisions of this Court, and present no substantial federal question. The appellant does not contend that the state has not plenary power to regulate or prohibit the erection of ducking blinds below high water mark. That this power exists is established by the decisions, on two grounds: (1) that the soil below low water mark belongs to the state, *Smith vs. Maryland*, 18 How. 71; *McCready vs. Virginia*, 94 U. S. 248; (2) that the state has full power to conserve game and other wild life, *Manchester vs. Mass.*, 139 U. S. 240; *Lawton vs. Steele*, 152 U. S. 137; *Geer vs. Connecticut*, 161 U. S. 519.

Accordingly it is not disputed that the state may properly prescribe the position of ducking blinds.

The contention that the law is not uniform as to all of the waters of the state is without substance. Statutes creating restrictions on the taking of wild life which are local in character, and which are limited in their territorial ambit, have repeatedly been sustained. Thus *Manchester vs. Massachusetts, supra,* sustained an act relating solely to the waters of Buzzard's Bay. See also *Lawton vs. Steele, supra.*

The contention that the Act discriminates between riparian owners is equally unsubstantial. If the state, as is conceded, has power to prescribe the interval at which ducking blinds may be erected, then it has power to protect riparian owners from being deprived of the vilege of erecting such blinds by the conduct of adning owners in placing blinds at a point near the

division line between the properties. *Lindsley vs. Natural Carbonic Gas Co.*, 220 U. S. 78; *Walls vs. Midland Carbon Co.*, 254 U. S. 300; *Bacon vs. Walker*, 204 U. S. 311; *Gorieb vs. Fox*, 274 U. S. 604. The provision permitting adjoining owners to consent to the erection of blinds nearer to the division line than the distance fixed by the statute is similar to that sustained in *Cusack Co. vs. Chicago*, 242 U. S. 526.

This Court has recently twice refused to grant a writ of certiorari for the purpose of bringing up cases presenting a question exactly analogous to that here involved. See *Oxford Co. vs. Atlantic Co.*, 22 F. (2) 597. Certiorari denied 277 U. S. 585. *Marrs vs. Oxford Co.*, 24 F. (2) 541. Certiorari denied 280 U. S. 573. The statutes there involved prescribed the intervals and fixed the distance from adjoining property lines at which wells for oil or gas might be drilled.

Respectfully submitted,

ROBERT H. ARCHER,

WILLIAM L. MARBURY, JR.,

Counsel for Appellees.

APPENDIX.

The provisions of Article 99 of the Code of Public General Laws of Maryland complained of in this case are found in Bagby's Annotated Code of Maryland, 1929 Supp. and are as follows:

"Sec. 40. All owners of riparian rights, their lessees or licensees on the waters of this State shall, by virtue of said ownership, be first entitled to make a choice of the "set" or position in front of the property of which they are the owners of the riparian rights, lessees or licensees, for the purpose to erect, set or maintain booby, brush or stake blind or blinds, provided, that said riparian owners, their lessees or licensees shall avail themselves of said choice of localities and clearly mark the same on said waters by erecting a stake, on which shall appear the license number of each blind and the licensee's name as hereinafter provided on or before October 10th of each and every year, and said blind or blinds licensed prior to October 10th must be erected on or before November 10th and said blind or blinds licensed after November 10th must be erected on or before twenty days thereafter, except as herein provided.

(a) For the protection of shoreowners, their lessees or licensees, desiring to locate a blind or blinds on their shore, the purchase of a license as herein provided and the establishment of a stake on which shall be painted the license number and the name of the licensee, such stake not to exceed the lawful distance from shore and be established in the water, when said stake shall be established on or before October 10th, then said stake shall be termed as a blind as hereinafter provided.

(b) No booby, brush or stake blind shall be licensed or erected in the waters of Chester River and its tributaries within the jurisdiction of Kent County except Grey's Inn Creek, Comegy's Bight and between a line drawn from Beaver Dam in Hail Creek, Kent County, to Stoney Bar Bluff at the mouth of

Jackson's Creek in Queen Anne's County, and Drum Point in Kent County; and no booby, brush or stake blind shall be licensed or erected in the waters of the Chesapeake Bay within the jurisdiction of Kent County between the north end of Hickory Thicket and the mouth of the Chester River.

(c) This section shall not apply to any person who has an established licensed blind or blinds located in the waters of Anne Arundel County or in the waters of the Chesapeake Bay opposite the shore line of said county prior to January 1st, 1927, and said licensee shall have the right to renew said license on or before the first day of July of each year thereafter.

(d) No booby, brush or stake blind shall be licensed or erected in the waters of Bohemia River and its tributaries, within the jurisdiction of Cecil County."

"41. It shall be lawful in or over the waters to erect, set or maintain a booby, brush or stake blind, and same shall be stationary; in which shall be built a platform for the purpose of shooting from. It shall be unlawful to erect, set or maintain any blind at a greater distance than 300 yards from the natural shore, from which same may be erected. Said blinds shall not be less than 500 yards apart measured in a straight line; provided, however, it shall be unlawful in or over the waters of Baltimore County to erect, set or maintain any blind at a greater distance than 150 yards from the natural shore.

(a) It shall be unlawful on any of the rivers of this State for any person to erect, set or maintain a blind at a farther distance from the shore than one-half of said river where said river is less then 600 yards in width, nor shall any person place any blind on any of the rivers across any channel where said channel runs near the center of said river.

(b) Provided, however, that in the tributaries of the Chesapeake Bay and in the tributaries of the Potomac River in Charles County and on the waters

of Baltimore County said blinds shall not be less than 250 yards apart measured in a straight line. However, the 250 yards as provided in Paragraph A of Section 46 of this Article, shall not apply to Baltimore County."

"46. Any person who shall obtain a license as provided for in this Article to erect a blind and the same may thereafter be destroyed in any manner beyond the control of the owner, shall ~~have~~ thirty days in which to replace or restore same without losing the set which the same formerly occupied.

(a) Whenever an owner of land bordering on any waters of this State shall desire to erect a booby, brush or stake blind in front of his property, or other person to whom he shall give permission, he shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters (the distance contained herein shall not apply to the waters that are tributary of the Chesapeake Bay and the Potomac River in the Counties of Charles, Calvert and St. Mary's), meaning a line extending out over the waters drawn direct from the dividing line of said properties at the shore line, unless with the consent of the adjoining landowner, same being for the purpose of allowing each landowner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting or maintaining a booby, brush or stake blind in front of his property."

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EDWIN LEE LECOMPTE, FREDERICK S. BARBER,
Appellees.

APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

BRIEF FOR APPELLEE.

ROBERT H. ARCHER,
WILLIAM L. MARBURY, JR.,
Assistant Attorneys-General.

INDEX.

PAGES

THE JURISDICTION OF THIS COURT 2

STATEMENT OF THE CASE 4

History of the Legislation Involved 6

The Proceedings Below 9

POINTS RAISED IN ARGUMENT 9

I. The State Has Plenary Power To Regulate and Prohibit the Erection of Ducking Blinds Below Low Water Mark 10-15

II. The Legislation Here Involved Does Not Discriminate Against the Appellant Nor Deny To Him the Equal Protection of the Laws 16-23

CONCLUSION 23

APPENDIX 25

STATUTES.

ACTS OF GENERAL ASSEMBLY OF MARYLAND

I. Cited in Brief:

1927, Chapter 568 8
1929, Chapter 366 8
1914, Chapter 767 6

II. Cited in Appendix:

1904, Chapter 486 25
1906, Chapter 369 25
1906, Chapter 465 25
1910, Chapter 189 25

1912, Chapter 768 25
1914, Chapter 315 25
1914, Chapter 767 25
1920, Chapter 88 25
1920, Chapter 264 25
1922, Chapter 185 25
1922, Chapter 212 25
1922, Chapter 304 25
1922, Chapter 359 25
1922, Chapter 458 27

TABLE OF CASES.

PAGES

Bacon vs. Walker, 204 U. S. 311 16
Cissna vs. Tennessee, 246 U. S. 289 4
Cusack vs. Chicago, 242 U. S. 526 20
Geer vs. Conn., 161 U. S. 519 14
Gorieb vs. Fox, 274 U. S. 604 20
Home Ins. Co. vs. Dick, 281 U. S. 397 4
Howard vs. Fleming, 191 U. S. 126 3
Lawton vs. Steele, 152 U. S. 137 13
Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78 19
Mallinckrodt vs. Missouri, 238 U. S. 41 4
Manchester vs. Mass., 139 U. S. 240 12
McCready vs. Va., 94 U. S. 248 11
Marrs vs. Oxford, 32 Fed. (2d) 134 20
Miedreich vs. Lauenstein, 232 U. S. 236 3
Oxford Oil Co. vs. Atlantic Oil Co., 22 Fed. (2d) 597 20
Smith vs. Md., 18 Howard, 71 10
Walls vs. Midland Carbon Co., 254 U. S. 300 20

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Appellees.

Appeal from the Court of Appeals of Maryland.

BRIEF FOR APPELLEE.

This is an appeal from a judgment of the Court of Appeals of Maryland, affirming a decree of the Circuit Court for Charles County dismissing the appellant's bill in equity. This appeal seeks to bring before this Court the validity of Sections 39, 40 and 46 of Chapter 568 of the Acts of the Legislature of Maryland for the year 1927, as amended by Chapter 366 of the Acts of 1929. These sections as amended are now codified as Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland (Bagby's Edition, 1929 Supplement) under the title "Water Fowl—Birds

and Game." They are printed in an appendix to the brief of the appellee in support of the motion to dismiss or affirm heretofore filed, and also appear as an appendix to the brief for the appellant. The appellant in his brief appears to have supplied sub-titles which do not appear in the Code.

The opinion of the Court of Appeals of Maryland has not yet been officially reported, but may be found in the record in this case, beginning on page 18. (See also 150 Atl. Rep. 455). Judge DIGGES, who sat in the Circuit Court for Charles County, also filed an opinion which appears in the record, beginning at page 8.

THE JURISDICTION OF THIS COURT.

Counsel for the appellees have already filed a motion to dismiss or affirm the judgment of the Court of Appeals on the ground that the questions on which the decision in this case depends are so unsubstantial as not to need further argument, and do not present any substantial federal question. Since filing that motion, the attention of counsel for the appellee has been drawn to the fact that it does not appear from the record that the appellant ever sought to invoke the protection of the Constitution of the United States until after final judgment had been entered in the Court of Appeals of Maryland.

The appellant's bill of complaint alleges that the action of the appellees in interfering with the lawful use of his ducking blind "is a violation of his rights under the Constitution and Laws of the State of Maryland, and is depriving him of his property and lawful rights without any warrant or authority in law, and for which wrongs

he has no adequate remedy at law" (R., p. 2). The petition for appeal contains the following language:

> "Petitioner shows that in the record of proceedings it appears that there was drawn in question the validity of Sections 40, 41 and 46 of Article 99 of the Public General Laws of Maryland, Title Water Fowl, Birds and Game; subtitle, Water Fowl and Migratory Birds, and *it is claimed* that the said sections are repugnant to and in violation of the 14th Amendment of the Constitution of the United States, etc." (R., pp. 14-15).

On this record, therefore, it appears that the claim of a right under the Federal Constitution was made for the first time in the petition for appeal.

However, both the opinion of the trial court and of the Court of Appeals of Maryland indicate consideration of the application of the guaranties of the Fourteenth Amendment of the Constitution of the United States to the present case. Whether under such circumstances this Court has jurisdiction to entertain the present appeal does not appear clear on the decided cases.

In *Howard vs. Fleming,* 191 U. S. 126, at page 137, this Court said:

> "It does not appear that the Federal character of the questions was presented to the supreme court of the state, although in the opinions of the supreme court the questions themselves were fully discussed. But in the absence of any claim to protection under the Federal Constitution, we are compelled to hold that we have no jurisdiction in the case coming from the supreme court of the state, and the writ of error will be dismissed."

But see:

Miedreich vs. Lauenstein, 232 U. S. 236.

Mallinckrodt vs. Missouri, 238 U. S. 41.
Cissna vs. Tennessee, 246 U. S. 289.
Home Ins. Co. vs. Dick, 281 U. S. 397.

STATEMENT OF THE CASE.

The legislation, the validity of which is here challenged, in effect provides that no ducking blind shall be erected at a greater distance than 300 yards from low water mark, and that blinds shall be at least 500 yards apart. It also provides that floating blinds are unlawful, prescribes how blinds shall be built *and requires the removal of all blinds as soon as the ducking season is over.*

The Act protects the riparian owner by giving him the right to select a site for a blind in front of his property prior to October 10th of each and every year, provided his location is not more than 300 yards from shore, and not closer than 250 yards to the division line of his property. The latter limitation furnishes protection to the landowner with a small water front by preventing the adjoining riparian owner from placing their stakes so close to his division line as to leave him less than the required distance between their blinds for his location.

After the 10th of October anyone may take up a location for a blind, provided it is not less than 500 yards from a location already taken; and if a riparian owner, who has applied for a license prior to October 10th, does not erect a blind on the location marked by him before November 10th, then anyone can apply for and obtain a license for the same location.

If a person has less than 500 yards of waterfront he may secure the right to erect a blind by obtaining permission from the adjoining riparian owners to exercise their rights.

The appellant in this case is the owner of a tract of land bordering on the Potomac River *for a distance of 43 feet 7 inches* (R., p. 7). To the north of the appellant the riparian owner is one H. F. Olcott. To the south the riparian owner is Grover C. Willett whose property has a frontage on the river of about 260 feet. Adjoining the Willett property is that of Daniel Thew Wright, who owns a great stretch of shore front and who has purchased from Willett his rights in the matter of the erection and maintenance of ducking blinds (R., p. 7). On the 8th day of June, 1929, Judge Wright secured from the Circuit Court for Charles County a ducking blind license for the purpose of erecting a ducking blind in front of his property, and before October 10th of that year he placed a stake with his name and license number thereon in front of his property and a little more than 250 yards from the southern property line of the appellant (R., p. 7).

Notwithstanding the fact that he was the owner of a frontage of only 43 feet 7 inches, and that a duly licensed and lawfully erected stake stood only a little more than 250 yards from his southern property line, the appellant, prior to September 5th, 1929, proceeded to erect a ducking blind in front of his property and within a few yards of his southern property line. The admitted facts therefore show that if the challenged legislation is valid, the ducking blind of the appellant was illegally erected in

that it was less than 500 yards distant from the legally erected blind of Judge Wright, and less than 5 yards distant from the property line of Mr. Willett (R., p. 7).

HISTORY OF THE LEGISLATION INVOLVED.

For more than fifty years prior to the enactment of the legislation now complained of, the problem of the limitation and regulation of the taking of wild fowl in the State of Maryland had been regarded as one for local legislation. Each of the counties of the State had dealt with this problem after its own fashion, and the statute books were cluttered with local laws which applied only in the separate counties. Reference to some of the local legislation will be found in an appendix hereto.

By Chapter 767 of the Acts of 1914, the Legislature of Maryland enacted for Dorchester County a local law regulating the distance between ducking blinds and the distance at which blinds might be erected beyond low water mark. Thereafter analogous laws were passed for the various tide-water counties, but there was a wide variance in their provisions depending upon the particular wishes of the communities involved. By process of amendment the differences between the various local laws were increased rather than diminished.

Meanwhile migratory birds were rapidly decreasing in numbers, and this decrease had reached such alarming proportions that the United States in 1916 entered into a treaty with Canada, regulating the taking of migratory birds in the two countries. This Act prescribed certain seasons in certain territorial zones, in one of which was included the tide-waters of the State of Maryland. Since

that time, the federal government has rigidly enforced the provisions of this treaty in Maryland territory.

The Conservation Department of the State of Maryland has endeavored to co-operate to the fullest extent in the enforcement of both the state and federal laws for the protection of these birds. But the great variance between the several local acts applicable to the different counties made it impossible to protect the wild fowl on the Chesapeake Bay and its tributaries to the extent which all agreed to be desirable. Practically every statute governing the erection of ducking blinds prescribed different intervals between the blinds and different distances from shore at which blinds might legally be erected, and the Game Wardens were often at a loss to know whether a blind erected in a particular locality violated the law or not. (See Appendix hereto.)

Prior to 1927 the Conservation Department had made a complete study of these local laws and the effect thereof upon the wild fowl of the State. After the study was completed, a general law was prepared, prescribing uniform intervals and distances from shore at which ducking blinds might be erected on the tide-water of the State below mean low water. Certain variations in the distance from shore at which blinds might be erected were permitted in view of the differing topography of the shore lines of the Bay and its tributaries. Otherwise all distances were uniform. This recodification of the law included many features not involved in the present appeal. See Bagby's Code (1929 Supplement), Article 99.

As is the case in all matters of this kind, where a large amount of conflicting local legislation is repealed and one

general law substituted therefor, a great deal of opposition arose to the Act in question during its passage, and a number of amendments were offered and some of them adopted. As an example of this, when one of the sections in question in this case was under consideration (Section 46), which provides in part that no riparian owner shall place a blind closer than 250 yards from the dividing line of his property, that clause was objected to by three Counties and the following amendment adopted: "(the distance contained herein shall not apply to the waters that are tributary to the Chesapeake Bay and the Potomac River in the Counties of Charles, Calvert and St. Mary's)"; meaning that the tributaries of the Bay and the tributaries of the Potomac River within these three Counties shall not be subject to this provision of the Section. In this way the needs and desires of the various localities as expressed by their elected representatives were met.

The result of the deliberations of the Legislature was the enactment of Chapter 568 of the Acts of 1927, entitled "The Game Law", being a complete revision of all of the laws of the State in this regard. That Act was subsequently strengthened by the passage of Chapter 366 of the Acts of 1929.

The enactment of these laws has made it possible for the Conservation Department to protect wild fowl in the tidewaters of the State of Maryland, and as a result the supply of wild fowl has been materially increased.

THE PROCEEDINGS BELOW.

This case originated in a bill of complaint filed by the appellant against the appellees to enjoin them from interfering with the erection, maintenance and lawful use by the appellant of the ducking blind here involved.

The answer of the appellees alleged all the facts which have heretofore been stated, and showed that the appellees were acting in pursuance of the duties imposed upon them by law, and solely for the purpose of preventing the erection of a ducking blind in violation of the provisions of Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland.

At the hearing before the trial court, no testimony was offered by either side, the appellant admitting the truth of the facts alleged in the answer, and further admitting that if the provisions of law referred to in the answer are constitutional, then the appellees were acting within their rights, and that it was their duty as game wardens to destroy the blind in question.

ARGUMENT.

I.

THE STATE HAS PLENARY POWER TO REGULATE AND PROHIBIT THE ERECTION OF DUCKING BLINDS BELOW LOW WATER MARK.

II.

THE LEGISLATION HERE INVOLVED DOES NOT DISCRIMINATE AGAINST THE APPELLANT NOR DENY TO HIM THE EQUAL PROTECTION OF THE LAWS.

I.

In *Smith vs. Maryland*, 18 Howard, 71, this Court sustained the validity of an act of the Maryland Legislature prohibiting the taking of oysters in any of the waters of the State with a scoop or drag, or any other instrument than tongs or rakes. In delivering the opinion of the Court, Mr. Justice CURTIS said:

> "Whatever soil below low water mark is the subject of exclusive propriety and ownership, belongs to the state on whose maritime border, and within whose territory, it lies, subject to any lawful grants of that soil by the state, or the sovereign power which governed its territory before the Declaration of Independence.
>
> "*Pollard's Lessee v. Hagan*, 3 How. 212; *Martin v. Waddell*, 16 Pet. 367; *Den v. The Jersey Co.*, 15 How. 426.
>
> "But this soil is held by the State, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shell fish as floating fish.
>
> "*Martin v. Waddell; Den v. Jersey Co.; Corfield v. Coryell*, 4 Wash. C. C. 346; *Fleet v. Hegeman*, 14 Wend. 42; *Arnold vs. Mundy*, 1 Halst. (N. J.) 1; *Parker v. Cutler, Milldam Corporation*, 2 Appleton (20 Me.), 353; *Peck v. Lockwood*, 5 Day, 22; *Weston et al. v. Sampson et al.*, 8 Cush. 347.
>
> "The State holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable, or destroy it altogether. This power results from the ownership of the soil, from the legislative jurisdiction of the State

over it, and from its duty to preserve unimpaired those public uses for which the soil is held.

"*Vattel,* bk. 1, ch. 20, sec. 246; *Cornfield v. Correll,* 4 Wash. 376.

"It has been exercised by many of the States. See Angell on Tide Waters, 145, 156, 170, 192, 193."

In the subsequent case of *McCready vs. Virginia,* 94 U. S. 248, this Court sustained a statute enacted by the State of Virginia prohibiting the citizens of other states from planting oysters in Ware River, a tide-water stream in that State. Mr. Chief Justice WAITE, speaking for the Court, said:

"The principle has long been settled in this court, that each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. *Pollard v. Hagan,* 3 How. 212; *Smith v. Md.,* 18 How. 74 (59 U. S. XV., 270); *Mumford v. Wardwell,* 6 Wall. 436 (73 U. S. XVIII. 761); *Weber v. Comrs.,* 18 Wall. 66 (85 U. S. XXI, 802). In like manner, the States own the tide-waters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty. *Martin v. Waddell,* 16 Pet. 410. The title thus held is subject to the paramount right of navigation, the regulation of which, in respect to foreign and interstate commerce, has been granted to the United States. There has been, however, no such grant of power over the fisheries. These remain under the exclusive control of the State, which has consequently the right, in its discretion, to appropriate its tide-waters, and their beds to be used by its People as a common for taking and cultivating fish, so far as it may be done without obstructing navigation. Such an appropriation is, in effect, nothing more than a regulation of the use by the People of their common property."

Accordingly it must be borne in mind that the State of Maryland, in regulating the positions at which ducking blinds may be erected below low water mark in the waters of the State, is not dealing with private property, but with the property of the people of the State.

Apart from the principle established in the cases to which reference has been made, it has repeatedly been laid down that the State has full power to enact legislation for the purpose of conserving game and other wild life. In *Manchester vs. Mass.*, 139 U. S. 240, this Court sustained an Act of the Legislature of the Commonwealth of Massachusetts regulating fishing in the waters of Buzzard's Bay. That act contained numerous prohibitions against the use of drag nets, purses, sweep seines, etc . Section 4 of the Act exempted from its provisions the use of certain nets "in the waters of the Town of Fairhaven within a line drawn from Commorant Rock southwesterly to the buoy on West Island Rips and from thence westerly in a straight course through the buoy on West Island Ledge to the town line of Fairhaven." Mr. Justice BLATCHFORD, speaking for the Court, said:

> "The Statute of Massachusetts which the defendant is charged with violating is, in terms, confined to waters 'within the jurisdiction of this Commonwealth'; and it was evidently passed for the preservation of the fish, and makes no discrimination in favor of citizens of Massachusetts and against citizens of other States. If there be a liberty of fishing for swimming fish in the navigable waters of the United States common to the inhabitants or the citizens of the United States, upon which we express no opinion, the Statute may well be considered as an impartial and reasonable regulation of this liberty; and the subject is one which a State may well be per-

> mitted to regulate within its territory, in the absence of any regulation by the United States. The preservation of fish, even although they are not used as food for human beings, but as food for other fish which are so used, is for the common benefit; and we are of opinion that the Statute is not repugnant to the Constitution and the laws of the United States."

In *Lawton vs. Steele*, 152 U. S. 137, this Court sustained the validity of an act of the Legislature of New York which provided that "No person shall at any time kill or take from the waters of Henderson Bay or Lake Ontario, within one mile from the shore, between the most westerly point of Pillar Point and the boundary line between the counties of Jefferson and Oswego * * * any fish of any kind by any device or means whatever otherwise than by hook and line or rod held in hand, etc." The Act further provided for the summary confiscation of any device found to be used in violation of this statute.

This Court, speaking through Mr. Justice Brown, said (pp. 138, 139):

> "The preservation of game and fish, however, has always been treated as within the proper domain of the police power, and laws limiting the season within which birds and wild animals may be killed or exposed for sale, and prescribing the time and manner in which fish may be caught, have been repeatedly upheld by the courts." * * *
>
> "As the waters referred to in the act are unquestionably within the jurisdiction of the state of New York, there can be no valid objection to a law regulating the manner in which fishing in these waters shall be carried on. *Hooker v. Cummings*, 20 Johns, 91, 11 Am. Dec. 249. The duty of preserving the fisheries of a state from extinction, by prohibiting

> exhaustive methods of fishing, or the use of such destructive instruments as are likely to result in the extermination of the young as well as the mature fish, is as clear as its power to secure to its citizens as far as possible, a supply of any other wholesome food."

In *Geer vs. Conn.*, 161 U. S. 519, this Court sustained an act of the State of Connecticut making it a criminal offense to have in possession for the purpose of transporting beyond the limits of the State, certain woodcock, grouse and quail. Mr. Justice WHITE, speaking for the Court said (p. 534):

> "Aside from the authority of the state, derived from the common ownership of game and the trust for the benefit of its people which the state exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the state of a police power to that end, which may be none the less efficiently called into play because by doing so interstate commerce may be remotely and indirectly affected. *Kidd v. Pearson*, 128 U. S. 1 (32; 346) 2 Inters. Com. Rep. 232; *Hall v. De Cuir*, 95 U. S. 485 (24; 547); *Sherlock v. Alling*, 93 U. S. 99, 103 (23; 819, 820); *Gibbons v. Ogden*, 22 U. S. 9 Wheat. 194 (6:69). Indeed, the source of the police power as to game birds (like those covered by the statute here called in question) flows from the duty of the state to preserve for its people a valuable food supply. *Phelps v. Racey*, 60 N. Y. 10, 19 Am. Rep. 140; *Ex parte Maier*, ubi supra; *Magner v. People*, ubi supra, and cases there cited. The exercise by the State of such power therefore comes directly within the principle of *Plumley v. Massachusetts*, 155 U. S. 461, 473 (39:223, 227). The power of a state to protect by adequate police regulation its people against the adulteration of articles of food (which was in that

case maintained), although in doing so commerce might be remotely affected, necessarily carries with it the existence of a like power to preserve a food supply which belongs in common to all the people of the state, which can only become the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the state and subject to the conditions which it may deem best to impose for the public good."

These authorities make it perfectly plain that the authority of the State to prohibit or regulate the erection of ducking blinds below low water mark is plenary, and it is submitted that the legislation here challenged is manifestly a reasonable exercise of that power.

II.

The appellant, while admitting that the State has full power to regulate or prohibit the erection of ducking blinds, asserts that the State may not adopt regulations which are discriminatory in their effect. The soundness of this contention is certainly open to question, where as here, the State is dealing with the public domain. Thus in *Bacon vs. Walker*, 204 U. S. 311, this Court, in sustaining a statute of Idaho prohibiting the grazing of sheep on the public domain within two miles of any dwelling house, said (p. 314):

> "The specifications of the grounds of the unconstitutionality of those sections were, in the courts below, and are, in this court (1) that plaintiff in error has an equal right to pasture with other citizens upon the public domain, and that, by imposing damages on him for exercising that right, he is deprived of his property without due process of law; (2) that a discrimination is arbitrarily and unlawfully made by the statutes between citizens engaged in sheep grazing on the public domain and citizens engaged in grazing other classes of stock.
>
> "These grounds do not entirely depend upon the same considerations. The first denies to the state any power to limit or regulate the right of pasture asserted to exist; the other concedes such power, and attacks it only as it discriminates against the grazers of sheep. We speak only of the right to pasture, because plaintiff in error does not show that he is the owner of the land upon which his sheep grazed, and what rights owners of land may have to attack the statute we put out of consideration. *New York ex rel Hatch v. Reardon*, 204 U. S. 152, ante, 415, 27 Sup. Ct. Rep. 188. But we may remark that the Supreme Court of Idaho said in *Sweet v. Ballentyne*, 8 Idaho, 431, 440, 69 Pac. 995:

'These statutes (1210, 1211, quoted above) were not intended to prevent owners from grazing sheep upon their own lands, although situated within 2 miles of the dwelling of another.' Is it true, therefore, even if it be conceded that there is right or license to pasture upon the public domain, that the State may not limit or regulate the right or license? Defendants in error have an equal right with plaintiff in error, and the state has an interest in the accommodation of those rights. It may even have an interest above such accommodation. The laws and policy of a state may be framed and shaped to suit its conditions of climate and soil. Illustrations of this power are afforded by recent decisions of this court. In *Clark v. Nash,* 198 U. S. 361, 49 L. Ed. 1085, 25 Sup. Ct. Rep. 676, a use of property was declared to be public which, independent of the conditions existing in the State, might otherwise have been considered as private. So also in *Strickley v. Highland Boy Gold Min. Co.,* 200 U. S. 527, 50 L. Ed. 581, 26 Sup. Ct. Rep. 301. In the first case there was a recognition of the power of the state to deal with and accommodate its laws to the conditions of an arid country and the necessity of irrigation to its development. The second was the recognition of the power of the state to work out from the conditions existing in a mining region the largest welfare of its inhabitants. And again, in *Offield v. New York, N. H. & H. R. Co.,* 203 U. S. 372, ante, 231, 27 Sup. Ct. Rep. 72, the principle of those cases was affirmed and applied to conditions entirely dissimilar, and it was declared that it was competent for a state to provide for the compulsory transfer of shares of stock in a corporation, the ownership of which stood in the way of the increase of means of transportation, and the public benefit which would result from that. Of pertinent significance is the case of *Ohio Oil Co. v. Indiana,* 177 U. S. 190, 44 L. ed. 729, 20 Sup. Ct. Rep. 576. There a statute of the state of Indiana was attacked, which regulated the sinking, maintenance, use, and operation of natural gas and oil

wells. The object of the statute was to prevent the waste of gas. The defendants in the action asserted against the statute the ownership of the soil and the familiar principle that such ownership carried with it the right to the minerals beneath and the consequent privilege of mining to extract them. The principle was conceded, but it was declared inapplicable, as ignoring the peculiar character of the substances—oil and gas—with which the statute was concerned. It was pointed out that those substances, though situated beneath the surface, had no fixed situs, but had the power of self-transmission. No one owner, it was therefore said, could exercise his right to extract from the common reservoir, in which the supply was held without, to an extent, diminishing the source of supply to which all the other owners of the surface had to exercise their rights. The waste of one owner, it was further said, cause by a reckless enjoyment of his right, operated upon the other surface owners. The statute was sustained as a constitutional exercise of the power of the state, on account of the peculiar nature of the right and the objects upon which it was exerted, for the purpose of protecting all of the collective owners.

"These cases make it unnecessary to consider the argument of counsel based upon what they deem to be the limits of the police power of a state, and their contention that the statute of Idaho transcends those limits."

See also the learned opinion of Mr. Justice WHITE in *Geer vs. Connecticut, supra.*

But it is not necessary to rely on so broad a proposition as appears to have been laid down in those cases, for the statutes here involved manifestly do not discriminate against the appellant. The provisions of the law requiring that blinds be placed at an interval of not less

than 500 yards is a protection to the hunter from the standpoint of safety, and a protection to the wild fowl in that it enables them to get into shallow water for raising and feeding.

The provision that no blind shall be erected prior to November 10th, within 250 yards of the property line of any adjoining riparian owner, was enacted in order to protect such riparian owners in the enjoyment of the privilege which the State saw fit to confer upon them. Similar provisions have long been contained in local legislation. (See Appendix hereto.) Were it not so provided, any person might erect blinds in front of shore property and entirely destroy its availability for the very purpose for which it had been purchased at great cost by the shore owner. Moreover, in view of the 500-yards interval prescribed, a riparian owner might be deprived of the privilege of erecting any blind, even though his shore front should extend for 1,000 yards, if his neighbors should see fit to place blinds right up against their property line.

It is true that the appellant in this case, *who owns only 44 feet of shore front,* may not erect a blind prior to November 10th of any year without obtaining the permission of the adjoining riparian owners. But there is nothing to prevent him from doing what they have done, namely, from acquiring sufficient shore front to obtain the privilege which the State has conferred upon them.

The principle underlying this legislation has repeatedly been sustained by this Court. In addition to *Bacon vs. Walker, supra,* reference is made to *Lindsley vs. Nat-*

ural Carbonic Gas Co., 220 U. S. 61; *Walls vs. Midland Carbon Co.*, 254 U. S. 300; *Gorieb vs. Fox*, 274 U. S. 603.

On the authority of those cases, the Circuit Courts of Appeals for the Fifth and Eighth Circuits, have sustained legislation prescribing the intervals and fixing the distance from adjoining property lines at which wells for oil or gas may be drilled.

See:

Oxford Oil Co. vs. Atlantic Oil Co., 22 Fed. (2d) 597, Certiorari denied, 277 U. S. 585;

Marrs vs. Oxford, 32 Fed. (2d) 134, Certiorari denied, 280 U. S. 573.

These cases we think conclusively establish the validity of provisions prohibiting the erection of ducking blinds within 250 yards of the property line of any adjoining riparian owner. The appellant, while apparently conceding the validity of these provisions, seems to think that the further provision authorizing an adjoining property owner to consent to the erection of a ducking blind nearer to his property line than 250 yards, invalidates the legislation. *But once the power of the State to prohibit the erection of the ducking blind for the benefit of adjoining property owners is conceded, then there can be no objection to that property owner waiving the provision made for his benefit.*

In *Cusack vs. Chicago*, 242 U. S. 526, this Court sustained a municipal ordinance of the City of Chicago governing the erection and maintenance of billboards in that city. That act prohibited the erection of any billboard in

any block in which one-half of the buildings on both sides of the street were used exclusively for residence purposes without first obtaining the consent in writing of the owners of a majority of the frontage. Mr. Justice CLARK spoke for the Court as follows (p. 530):

> "The claim is palpably frivolous that the validity of the ordinance is impaired by the provision that such billboards may be erected in such districts as are described if the consent in writing is obtained of the owners of a majority of the frontage on both sides of the street in any block in which such billboard is to be erected. The plaintiff in error cannot be injured, but obviously may be benefited, by this provision, for without it the prohibition of the erection of such billboards in such residence sections is absolute. He who is not injured by the operation of a law or ordinance cannot be said to be deprived by it of either constitutional right or of property. *Tyler vs. Judges of Ct. of Registration*, 179 U. S. 405, 45 L. ed. 252, 21 Sup. Ct. Rep. 206; *Plymouth Coal Co. vs. Pennsylvania*, 232 U. S. 531, 58 L. ed. 713, 34 Sup. Ct. Rep. 359. To this we may add that such a reference to a neighborhood of the propriety of having carried on within it trades or occupations which are properly the subject of regulation in the exercise of the police power is not uncommon in laws which have been sustained against every possible claim of unconstitutionality, such as the right to maintain saloons (*Swift vs. People*, 162 Ill. 534, 33 L. R. A. 470, 44 N. E. 528), and as to the location of garages (*People ex re. Busching vs. Ericsson*, 263 Ill. 368, L. R. A. 1915D, 607, 105 N. E. 315, Ann. Cas. 1915C, 183). Such treatment is plainly applicable to offensive structures.
>
> "The principles governing the exercise of the police power have received such frequent application, and have been so elaborated upon in recent decisions of this court, concluding with *Armour & Co. vs. North Dakota*, 240 U. S. 510, 514, 60 L. ed.

771, 775, 36 Sup. Ct. Rep. 440, Ann. Cas. 1916D, 548, that further discussion of them would not be profitable, especially in a case falling as clearly as this one does within their scope. We therefore content ourselves with saying that while this court has refrained from any attempt to define with precision the limits of the police power, yet its disposition is to favor the validity of laws relating to matters completely within the territory of the state enacting them, and it so reluctantly disagrees with the local legislative authority, primarily the judge of the public welfare, especially when its action is approved by the highest court of the state whose people are directly concerned, that it will interfere with the action of such authority only when it is plain and palpable that it has no real or substantial relation to the public health, safety, morals or to the general welfare. *Jacobson vs. Massachusetts*, 197 U. S. 11, 30, 49 L. ed. 643, 651, 25 Sup. Ct. Rep. 358, 3 Ann. Cas. 765. And this, for the reasons stated, cannot be said of the ordinance which we have here.

"The plaintiff in error relies chiefly upon *Eubank v. Richmond*, 226 U. S. 137, 57 L. ed. 156, 42 L. R. A. (N. S.) 1123, 33 Sup. Ct. Rep. 76, Ann. Cas. 1914B, 192. A sufficient distinction between the ordinance there considered and the one at bar is plain. The former left the establishment of the building line untouched until the lot owners should act, and then made the street committee the mere automatic register of that action, and gave to it the effect of law. The ordinance in the case at bar absolutely prohibits the erection of any billboards in the blocks designated, but permits this prohibition to be modified with the consent of the persons who are to be most affected by such modification. The one ordinance permits two-thirds of the lot owners to impose restrictions upon the other property in the block, while the other permits one-half of the lot owners to remove a restriction from the other property owners. This is not a delegation of legislative power, but is, as we have seen, a familiar provision affecting the enforcement of laws and ordinances."

Finally the appellant offers a faint contention that the legislation in question is discriminatory because it is not applicable to the tributaries of the Chesapeake Bay and the Potomac River in the Counties of Charles, Calvert and St. Mary's. The reasons why the Act is not uniform in every particular as to all of the waters of the State have heretofore been explained. They are chiefly historical. In any event, the right of the State to make territorial classifications of this character is clearly established by the decisions in *McCready vs. Va.*, 94 U. S. 248; *Manchester vs. Mass.*, 139 U. S. 240, and *Lawton vs. Steele*, 152 U. S. 137, which have heretofore been referred to at length in this brief.

CONCLUSION.

It is respectfully sumitted that no question is presented by this appeal that has not been fully covered by applicable decisions of this Court; that the statutes here involved are manifestly valid, and that the judgment of the Court of Appeals of Maryland should be affirmed.

Respectfully submitted,

ROBERT H. ARCHER,

WILLIAM L. MARBURY, JR.,

Assistant Attorneys-General.

APPENDIX.

The following are references to the Acts of the Legislature of Maryland regulating the erection and maintenance of ducking blinds, all of which were repealed by Chapter 568 of the Acts of 1927, which recodified and revised the entire game laws of the State of Maryland:

ANNE ARUNDEL COUNTY
- Chapter 486, Acts of 1904
- Chapter 369, Acts of 1906
- Chapter 465, Acts of 1906
- Chapter 189, Acts of 1910

CALVERT COUNTY
- Chapter 359, Acts of 1922

DORCHESTER COUNTY
- Chapter 767, Acts of 1914
- Chapter 185, Acts of 1922

KENT COUNTY
- Chapter 487, Acts of 1922
- Chapter 458, Acts of 1922

CECIL COUNTY
- Chapter 458, Acts of 1922

QUEEN ANNE'S COUNTY
- Chapter 768, Acts of 1912

ST. MARY'S COUNTY
- Chapter 264, Acts of 1920

TALBOT COUNTY
- Chapter 88, Acts of 1920
- Chapter 212, Acts of 1922
- Chapter 304, Acts of 1922

See also Chapter 315 of the Acts of 1914, relating to the Patuxent River and its tributaries.

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 402.—October Term, 1930.

Thomas M. Wampler, Appellant,
vs.
E. Lee Lecompte, State Game Warden, et al.

Appeal from the Court of Appeals of the State of Maryland.

[December 8, 1930.]

Mr. Justice Brandeis delivered the opinion of the Court.

The game laws of Maryland provide for granting annual licenses for the erection and maintenance of duck blinds in the waters of the State. No blind may be placed at a greater distance from the natural shore than 300 yards; and blinds must be at least 500 yards apart. A preferential right to select the position for a blind is conferred upon the riparian owner; but he may not place a blind "within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters . . . unless with the consent of the adjoining landowner." For certain waters the limitations prescribed are different from those above stated. In some, permission to erect a blind is wholly denied. For others, existing licenses are made renewable without condition. Code of Public General Laws of Maryland, Article 99, ~~secs. 39-46~~; ~~Acts of 1927, c. 589, secs. 39-40; Acts of 1929, c. 366, secs. 39-41.~~ (Supp. 1929) §§ 40-47.

Wampler, a resident of Charles County, owns land bordering on the Potomac River for a distance of less than 44 feet. Claiming to act under a license issued to him in June, 1929, he erected a duck blind at a point within 250 yards of the dividing line of his land and that of the adjoining owners on both the north and the south. Game wardens, acting pursuant to the statutes, destroyed Wampler's blind as being an illegal structure; and they threatened to destroy any other blind which he might erect under like conditions. To enjoin such action Wampler brought this suit against them in a state court. He conceded that the State has power to prohibit altogether the erection of blinds or to regulate their erection

and maintenance.[1] His sole claim is that this statute violates the equality clause of the Fourteenth Amendment, because it discriminates in favor of riparian owners with a frontage of more than 500 yards; and also because it does not apply uniformly to all the waters of the State. The hearing was on bill and answer. The trial court dismissed the bill on the merits. Its decree was affirmed by the highest court of the State. 150 Atl. 455.

No fact is shown on which to base the contention that the State's power of classification has been exercised unreasonably. The purpose of the legislation is, as the court found, "the conservation of water fowl and the protection and safety of those engaged in shooting them. The necessity for such regulation is apparent, for if blinds could be erected in broad waters at any distance from the shore, without regard to the distance separating them, it would not only be conducive to the destruction and annihilation of ducks and other water fowl, but extremely dangerous to those shooting them." 150 Atl. 457. The provision which prohibits placing a blind within 250 yards of the land of an adjoining owner without securing his consent, is a necessary incident of the preferential right conferred upon riparian owners. See *Sheehy* v. *Thomas*, 155 Md. 688. There was obviously no intention to discriminate in favor of persons having a large water frontage; for the consent provision enables owners of small frontages to join in erecting blinds spaced the requisite distance apart.

Nor is the equality clause violated by the special provisions that in certain inland waters blinds need not be placed farther apart than 250 yards. The state court, relying upon *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78, said: "Why these provisions were inserted in the statute we are not informed, but we may assume, until the contrary is shown, that a state of facts in respect thereto, existed, which warranted the legislature in so legislating." 150 Atl. 458. This long-settled rule disposes also of the alleged discrimination created by the special exemptions applicable to certain other waters of the State.[2]

Affirmed.

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[1]Compare Smith *v.* Howard, 18 How. 71; McCready *v.* Virginia, 94 U. S. 391; Manchester *v.* Massachusetts, 139 U. S. 240; Lawton *v.* Steele, 152 U. S. 133.

[2]See Close *v.* Glenwood Cemetery, 107 U. S. 466, 475; Powell *v.* Pennsylvania, 127 U. S. 678, 685; Chicago Dock Co. *v.* Fraley, 228 U. S. 680, 686; Rast *v.* Van Deman & Lewis Co., 240 U. S. 342, 357.